160 US 584

RECORD, CASE No. 14,514.

160—584

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., ~~888.~~ 400 94 15

FRANK P. DICKSON, APPELLANT,

vs.

RICHARD C. PATTERSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED MARCH 9, 1891.

RECORD, CASE No. 14,514.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 668.

FRANK P. DICKSON, APPELLANT,

vs.

RICHARD C. PATTERSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Answer	10	7
Replication	16	11
Order granting leave to file amended bill	17	11
Amended bill of complaint	17	12
Answer of Richard C. Patterson to amended bill	27	18
Answer of Isaac Martin to amended bill	34	22
Replication	36	23
Order granting leave to amend answers	37	24
Amendment to answer of R. C. Patterson	37	24
Replication to amendment to answer of defendant Patterson	40	26
Deposition of Alonzo P. Tukey on behalf of complainant	41	27
William Keysor on behalf of complainant	47	31
Francis S. Wessels on behalf of complainant	55	36
John F. Wilbur on behalf of complainant	59	38
Frank P. Dickson on behalf of complainant	62	40
J. T. Bell on behalf of complainant	81	52

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 1, 1892.

	Original	Print.
Deposition of George M. Hicks on behalf of complainant	89	58
W. G. Shriver on behalf of complainant	97	62
T. A. Megeath on behalf of complainant	101	64
George W. Ames on behalf of complainant	104	65
Harry Reed on behalf of complainant	108	69
John L. McCague on behalf of complainant	116	69
Otto Boehme on behalf of complainant	119	76
Exhibits 1 and 2—Letters from Patterson to Dickson, May 18, 1885	126	81
Exhibit 3—Letters from Patterson to Dickson, May 25, 1885	128	82
4—Draft on Dickson, drawn by Patterson May 30, 1885	129	83
5—Letter from Patterson to Dickson, May 29, 1885	129	83
6—Letter from Patterson to Dickson, June 5, 1885	130	84
7—Letter from Patterson to Dickson, June 11, 1885	131	84
Plat of Patterson and Dickson place	132	85
Exhibits 8 and 9—Letters from Patterson to Dickson, July 17 and August 17, 1885	133	85
Exhibit 10—Letters from Patterson to Dickson, August 24, 1885	135	86
Exhibits 11 and 12—Letters from Patterson to Dickson, August 26 and October 21, 1885	136	87
Exhibit 12½—Letters from Patterson to Dickson, October 30, 1885	137	88
Map of Omaha	138½	88
Certificate of survey by M. P. Kenney	139	88
Dedication of streets and alleys by Patterson	139	88
Exhibit 00010—Plat of East Side addition	139½	89
00017—Deed from Tukey *et al* to Patterson and Dickson	141	89
00018—Deed from Patterson *et al.* to Tukey *et al.*	143	90
00019—Plat of Patterson and Dickson place	145½	92
Certificate of survey by J. E. House	146	92
Dedication of streets and alleys by Patterson and Dickson	146	92
Exhibit 00020—Deed from Patterson *et al.* to Boehme	148	94
00021—Deed from Boehme to Patterson	152	96
00022—Vacation of plat by Patterson	153	97
00023—Deed from Patterson to Fawcett	155	98
00024—Deed from Patterson to Pippin	157	100
00025—Deed from Patterson to Montgomery	158	101
00026—Deed from Patterson to Millhouse *et al.*	160	102
00027—Deed from Patterson to Martin	162	104
00028—Letter from Boehme to Dickson, March 2, 1886	164	105
Deposition of John L. Webster on behalf of complainant	166	106
Otto Boehme on behalf of complainant	167	107
Exhibit A—Referred to in deposition of Boehme, to wit, deed from Patterson and Dickson to Boehme	170	109
Deposition of J. H. Patterson on behalf of defendant	178	114
Copeland Townsend on behalf of complainant	190	121
William W. Keysor on behalf of complainant	195	125
A. P. Tukey on behalf of complainant	199	128
Richard C. Patterson on behalf of complainant	201	129
Exhibit 30—Letter from Patterson to Dickson, March 8, 1886	247	158
31—Letter from Patterson to Dickson, May 19, 1886	248	159
32—Letter from Patterson to Dickson, March 3, 1886	249	160
33—Letter from Patterson to Boehme, March 1, 1886	253	162
A—Deed from Tukey to Patterson and Dickson	271	172
B—Contract between Patterson and Martin	272	174

	Original.	Print.
Exhibit C—Deed from Boehme to Patterson	276	177
D—Deed from Patterson to Martin	277	177
E—Letter from Dickson to Patterson, Feb. 27, 1886	279	179
No. 2—Letter from Dickson to Patterson, March 15, 1886	280	180
Exhibits No. 3 and 4—Letter from Dickson to Patterson, May 12 and 18, 1886	281	180
No. 5 and 6—Letter from Dickson to Patterson, September 4 and 14, 1886	282	181
Deposition of C. E. Mayne on behalf of defendant	283	181
Edwin Davis on behalf of defendant	286	183
H. B. Irvey on behalf of defendant	290	186
David Reed on behalf of defendant	294	189
John T. Dillon on behalf of defendant	299	192
John O. Patterson on behalf of defendant	307	197
Order of submission	317	204
Findings of the court	317	204
Decree dismissing bill	318	205
Affidavit of George W. Ames	320	206
Alexander G. Charlton	321	206
W. G. Shriver	322	207
John N. Frenzer	323	207
John L. McCague	324	208
Order granting appeal	325	209
Citations	326	209
Certificate of clerk	328	211

1 Pleas before the Honorable David J. Brewer, judge of the circuit court of the United States for the eighth circuit and district of Nebraska, at the term of January, A. D. 1890.

Thereupon, afterwards, to wit, on the 4th day of August, 1887, a bill of complaint was filed in the office of the clerk of said circuit court; which said bill is in words and figures following, to wit:

In equity.

To the honorable the judges of the circuit court of the United States for the district of Nebraska:

Frank P. Dickson, of Kansas City, in the State of Missouri, and a citizen of said State, brings this his bill against Richard C. Patterson, of the city of Omaha, in the State of Nebraska, and a citizen of said State.

And thereupon your orator complains and says:

I. On the 19th of May, 1885, Alonzo P. Tuckey and William W. Keysor were seized in fee as tenants in common of all that certain piece and parcel of land situate in the county of Douglas and the district of Nebraska, known and described as follows, to wit: The north half of the south half of the southwest quarter of the southwest quarter of section number twenty, in township number fifteen north, range number thirteen east, of the sixth principal meridian, containing ten acres, and the same is now of the value of twenty thousand dollars, and, being so thereof seized, the said defendant entered into negotiations with them for the purchase thereof.

Your orator and the said defendant had been friends for a long time prior thereto and had married sisters, and your orator had expressed to the said defendant a wish to join him in the purchase of a piece of property in or near Omaha, each contributing an equal part of the purchase price and being interested therein equally, with the view of laying the same out into lots as an addition to said city, the said defendant having been engaged in such adventures and having realized a large profit therefrom.

2 II. In consequence of such wish of your orator and on the day aforesaid the said defendant addressed to your orator a letter dated on said day, wherein, referring to such your orator's desire, he stated that he was about to buy ten acres of land for the purpose aforesaid, and in the course of the said letter he wrote:

"This ten acres will cost $4,800, $2,500 cash. They will make 48 lots, worth $250 each. If you want to go in, it will cost you $1,250 cash, balance to suit. Please answer immediately what you wish, as there — two other parties waiting for me to give them an answer about going in along."

Immediately thereupon your orator wrote a letter to the said defendant, making further inquiries touching the matter.

Thereupon and on the 22nd day of May, 1885, the said defendant addressed another letter to your orator, wherein he stated, among other things, that the expenses of surveying, advertising, and plat-

ting this property for sale would be about $300 and the net profits at least $6,000, and that, in his opinion, they would not be called upon to pay the deferred payments, and he further stated what large profits he had realized from other like adventures, and that other persons desired to join him and take an interest therein and urging your orator to do so.

III. Upon the receipt of the said letter and relying upon the statements made therein and the former one above referred to, your orator advised him, the defendant, by postal card through the mail that he would accept the said defendant's proposition and take one-half interest in the said lands. Thereupon and on the 25th day of May, 1885, the said defendant addressed a letter to your orator acknowledging the receipt of the said card, and further wrote as follows: "On the strength of your card I have notified my friend to-day that you had accepted my proposition and that therefore I could not take him in. I now have an abstract of the property in my possession and am about to make a careful examination of the same. As soon as I am satisfied that the title of this
3 property is clear and unincumbered I am to pay over the cash payment of $2,500. That I expect to do by Thursday or Friday of this week. If I can draw on you by that time, all will be right." On the 29th day of the same month the said defendant addressed another letter to your orator, in which, after speaking of the title shown by the said abstract, he said, among other things: "I received your letter this morning and note that you say I can draw on you for $1,250, your one-half cash payment on the ten acres," and also he stated that he enclosed therein a mortgage and note for the deferred payments. Immediately thereupon your orator executed the mortgage and notes for the deferred payments upon the said property. The said mortgage bore date on the 10th day of June, 1885, and was executed by your orator and the said defendant and their respective wives, whereby they conveyed the premises first above described to the said Tukey and Keysor to secure the payment of $2,300, according to the tenor of two several promissory notes, which notes were made by the said defendant and your orator to the said Tukey and Keysor, payable respectively in one and two years, one for $— and the other for $—, with interest; and on the 30th of said May the said defendant drew his certain draft upon your orator, payable at sight to the order of the Commercial National Bank of Omaha, for $1,250, and delivered the same to the said bank, which endorsed the same payable to the order of the Bank of Kansas City, to which bank, on the 1st of June, your orator paid the sum therein mentioned.

IV. On the 5th of June following the said defendant addressed to your orator a letter acknowledging the receipt of the said mortgage and notes and of the said $1,250, and that he had notified the said Tukey and Keysor that he was ready to complete the said purchase as soon as they were able to show a good title to the said premises.

V. On the 9th of June, in the year aforesaid, the said Tukey and

Keysor and their respective wives made to your orator and
4 the said defendant their deed, with the usual covenants for title and warranty, bearing date on said day and conveying the said premises in consideration of the sum therein stated of $4,800, and at the same time the said defendant delivered to them the notes and mortgage hereinbefore mentioned, which deed and mortgage were duly filed for record in the registry of said county on the day last aforesaid and were recorded therein, the former in the Book of Deeds 59, at page 444, and the latter in Book of Mortgages 25, at page 295, as by the said record or a certified copy thereof ready to be produced as your honors may direct will more fully appear. Relying upon the statements of the said defendant and the agreement between him and your orator, your orator supposed and believed that the purchase price of said premises was $4,800, and that of that sum $2,500 was paid in cash, one-half thereof by your orator and one-half by the defendant and the balance in the notes and mortgage aforesaid, nor was your orator informed of the contrary until long thereafter, whereas, in truth and in fact, the whole purchase price of the said premises paid by the said Patterson to the said Tukey and Keysor was $3,600 and no more, of which sum the cash payment was $1,250 and no more, and all thereof was the money of your orator advanced by him to the said defendant, as hereinbefore stated, the said notes and mortgage forming the balance of the said purchase price, and save as he joined in the execution of the said notes and mortgage the said defendant did not contribute anything whatever to the purchase price of the said lands and premises.

VI. In pursuance of the purpose, arrangement, and agreement between the said parties in that behalf the said defendant caused the said premises to be laid out into lots and streets and a plat thereof to be made, whereon the said premises were styled "Patter-
son and Dickson place," which was duly executed and
5 acknowledged by them and recorded in the registry aforesaid on the 21st of August, in said year, in Book 60, at page 619. Thereafter the said defendant wrote your orator a large number of letters speaking in the most encouraging terms of the prospects of realizing large returns from the said adventure, nor at any time did he in any way intimate to your orator his desire to abanson the purpose and intention of the said parties to sell the said premises in lots, nor had your orator any suspicions of such intention, but without consultation with your orator in that behalf and on the 21st day of October, 1885, the said defendant wrote to your orator a etter in which he stated the following:

"I have sold our ten acres to-day for $6,000, an advance of $1,200. It did not turn out as well as I expected. There has been about ten thousand lots of these kind thrown on the market this summer. I did so well last summer on Patterson's subdivision that everybody for four miles around platted up their farms and sold lots at $125 and $150 each and even less. I thought if I couldn't do better than that I wouldn't sell at all in lots. This is a very handsome profit for the length of time we have held it. He pays $3,000 cash and the

other $700 inside of six months and assumes the mortgage and all taxes. It nets us a little over $500 each profit."

On the 30th of October he further addressed a letter to your orator enclosing therein his check for $1,500 and correcting a statement formerly made as to the net profits and stating further that $224.18 was yet due and coming to your orator. The said defendant also enclosed to your orator a deed of the said premises, wherein the consideration therefor was stated to be $6,000, and by which when duly executed the said premises would be conveyed to one Otto Boehme; which deed your orator, together with his wife, duly executed and acknowledged and returned to the said defendant for the pur-
6 pose of completing the said sale. In doing so your orator relied upon the statement of the said defendant that he had sold the said premises for $6,000 and he believed such to be the fact, and that the said defendant in the exercise of his judgment had actually made such sale.

Thereupon the said defendant and his wife executed the said deed, but the consideration mentioned therein was, without your orator's knowledge or consent, changed from $6,000, as the same was therein expressed when executed by your orator, to $10,000. The said deed bore date on the 28th of October, 1885, and on the next day was recorded in the said registry in Book of Deeds 62, at page 396. Your orator is informed and believes and charges that the said defendant did not in fact sell said premises to said Otto Boehme for any sum whatever, but caused the said deed to be made in order to acquire the legal title to the said premises.

On the day last aforesaid the said Boehme made his certain deed of conveyance bearing date on said day, whereby, for the consideration therein expressed of $10,500, he reconveyed the said premises and all thereof to the said defendant, which deed was duly recorded in the said registry on the following day in Book of Deeds 62, at page 429.

And your orator charges that the deed last aforesaid was made in pursuance of the contrivance and design between the parties thereto prior to the aforesaid deed to said Boehme—that is to say, to vest the title to the said premises in the said Patterson and cut off the undivided one-half interest in the said premises vested in your orator.

And your orator charges that all of the statements and representations made by the said defendant to your orator touching the sale by him of the said premises were false and fraudulent and made for the fraudulent purpose aforesaid and for no other purpose, and that between the said defendant and the said Boehme no consideration whatever was paid on account of the said conveyances or either of them except a small sum paid by the said defendant
7 to said Boehme for his assistance in carrying out the said contrivance and scheme.

VII. On the 23rd of February, 1886, said defendant induced the proper authorities to vacate the plat made by him and your orator on the 21st of August, 1885, as hereinbefore stated, and on the 15th of May, 1886, he replatted the said lands under the name and style

of " East Side addition " and caused the same to be recorded in the said registry, and he is now offering the lots in the said addition for sale and has sold certain — thereof for large sums of money, part of which has been paid in cash and a part is secured by notes of the purchasers and mortgages upon the said lots, and he has entered into and is about to enter into contracts for the sale of other of the said lots and thereby acquire and collect into his hands large sums of money and securities for large amount and apply the same to his own use and benefit.

Wherefore your orator charges and insists that forasmuch as he paid all of the consideration for the said premises upon the purchase thereof first above mentioned and the said defendant advanced no part thereof, your orator is entitled to have all of the said premises and all the advantage which may arise from the said purchase, and forasmuch as the said defendant did not in point of fact make any sale of the said premises to the said Boehme, as he represented to your orator, and obtained your orator's deed for the said premises by false and fraudulent representations, your orator insists and charges that the said deed is void and that your orator is entitled to have the said premises conveyed to him by the said defendant, upon the payment, however, by your orator to the said defendant of what, upon an accounting in that behalf, it may be found your orator ought to reimburse him of the sums received by him as aforesaid; and the said defendant ought to come to an accounting with your orator in respect of whatever sums he has received from
8 or on account of the said premises or the lots into which he has divided the same.

Wherefore your orator prays that the said defendant may, if he can, show why your orator should not have the relief herein prayed and answer all and singular the matters and things hereinbefore stated and charged, but not under oath, his answer under oath being hereby expressly waived, and that an account be taken before one of the masters of this court under the direction of your honors of all sums received by your orator and proper to be repaid by him to the said defendant, and also of all sums received by the said defendant from and on account of sales of the said premises or any part thereof, and that it be by the said account ascertained what, if any, sums your orator ought to repay to the said defendant, and he now here offers to pay such sums as soon as the same shall be ascertained in manner aforesaid or otherwise, and that it be by the decree of your honors declared that by the purchase first hereinbefore stated your orator became entitled to have all of the benefit of the said purchase, and that by the deed made to your orator and the said defendant the said defendant became seized in fee of an undivided half of the premises hereinbefore described in trust for your orator and not otherwise, and that it be further declared that the deed made by your orator and his wife, together with the said defendant and his wife, to said Boehme and the deed made by the said Boehme to the said defendant were and each of them was fraudulent and void, and that thereby the said defendant became seized of the said premises in fee in trust for your orator,

and that it be by your honors decreed that the said defendant convey the said premises to your orator in fee, save such lots only as he has conveyed for a full and valuable consideration to persons and parties who were not informed of any of the facts hereinbefore stated, and that he pay to your orator whatever sum or sums he has realized from the sale of the said premises
9 or any lot or lots into which he has divided the same as hereinbefore stated, the amount thereof having been ascertained by the accounting herein prayed for, and that he assign to your orator all contracts, notes, and mortgages which he has taken on account of sales of any of the said lots, and that pending this your orator's bill he be enjoined and restrained from selling any of the said lots or receiving any money on account of the sales heretofore made by him from the purchasers, or selling, assigning, or transferring any contract, note, mortgage, or other security taken by him for, upon, or on account of the sale of any of the lots made by him, and that by the decree of your honors such injunction may, upon the final hearing of this your orator's bill, be made perpetual, and that the defendant pay the costs of this suit, and that your orator have all such other and further relief as the circumstances of this case require and is agreeable to equity and good conscience.

May it please your honors to grant unto your orator, not only the writ of injunction issuing out of and under the seal of this honorable court, directed to the said defendant, Richard C. Patterson, his agents, attorneys, solicitors, and counsellors, enjoining them and each of them, as hereinbefore prayed, but also the usual writ of subpœna issuing in like manner and directed to the said defendant, commanding him that at a day therein to be inserted he be and appear before your honors in this honorable court, then and there to answer the premises and stand to, perform, and abide such order and decree as to your honors shall seem meet and equitable.

And your orator will ever pray, etc.

J. M. WOOLWORTH,
Solicitor for Complainant and of Counsel.

Upon the back of said bill of complaint appear endorsements in words and figures following, to wit: No. 57, doc. M. United States circuit court. Frank P. Dickson *vs.* Richard C. Patterson. Bill of complaint. Filed Aug. 4, 1887. Elmer D. Frank, clerk.
10 J. M. Woolworth, sol. for complainant.

Thereupon, afterwards, to wit, on the 11th day of August, 1887, answer was filed in said case; which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

FRANK P. DICKSON, Complainant,
vs.
RICHARD C. PATTERSON, Defendant. } Answer.

The Answer of Richard C. Patterson to the Bill of Complaint of Frank P. Dickson, Complainant.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant for answer saith:

I. That he admots that Alonzo P. Tuky and William Keysor were seized in fee as tenants in common of the land in the bill of complaint described, and that on or about the 19th day of May, 1885, this defendant entered into negotiations with the said Alonzo P. Tukey and William W. Keysor for the purchase of said property.

This defendant further saith that when he had ascertained the price for which said property could be so purchased, to wit, the sum of $4,800, he did communicate to the complainant relating to said purchase, indicating to the said complainant that he, said complainant, might join with this defendant in the purchase of said property, and that this defendant did communicate to said complainant for the reason that prior thereto the said complainant had solicited of this defendant an opportunity to join with this defendant in
11 the purchase of some real estate in the city of Omaha and where this land in controversy was located. This defendant did communicate to said complainant the amount of cash which said complainant should pay in order to be permitted to take an undivided half interest in said purchase, to wit, the sum of $1,250.

II. This defendant had arranged with said Tukey and Keysor for the payment of a part of said purchase-money in cash and for the payment of the remainder thereof by notes and mortgages to be signed and executed by the complainant and this defendant, provided this complainant joined with this defendant in said purchase. This defendant was willing that this complainant might unite in said purchase if said complainant would pay the sum of $1,250 in cash, and not otherwise. This purchase was made by this defendant alone and said complainant had no part or lot therein, whereby this defendant was under no obligation whatever to permit said complainant to become a party to said purchase, except as this defendant should choose to do and upon such terms and conditions as this defendant should determine, and, this defendant having so determined upon what terms and conditions he would permit complainant herein to have any interest in said purchase, he did then communicate to said complainant that if he would advance the sum of

$1,250 in cash, to be applied on said purchase-money, he could unite with this defendant in the execution of said notes and mortgages for unpaid purchase-money — that then said complainant should have an interest in said property, and not otherwise.

This defendant, further answering, saith that there were other persons desirous to enter with this defendant in said purchase upon the same terms and conditions which this defendant gave to the complainant herein; that the complainant being fully advised in the premises and having agreed to accept the terms and conditions offered by this defendant that negotiations with other parties
12 were then and there terminated. This defendant further saith that he may have made by letter certain representations as to the probable net profits to be realized out of said property by advertising and platting the same, but this defendant further saith that he has no copy of such letter or letters to said complainant and is not now able to state with precision what he may have said in said letters; but this defendant further saith that what he did state in said letters about the profits to be realized out of said transaction he believed then and there that the same were true.

This defendant further saith that at said time speculation in lots in and about the city of Omaha was very great and the prospective profits to be realized from the platting of ground and selling of the same in the shape of lots was likewise very great, and this defendant then had reasonable ground to believe that very large profits would be made from said real-estate transaction.

This defendant further saith that the parties hereto did realize a fair profit from said real-estate speculation, as is hereinafter more fully disclosed, but this defendant further saith that after said purchase a large amount of lands surrounding the city of Omaha was thrown upon the market in the shape of lots, so that the value of such lots did not reach the price which this defendant anticipated by reason of so large a number thereof being placed upon the market for sale, but that the same was no fault of this defendant and not in any manner chargeable to any neglect of this defendant. This defendant admits that he did receive from the complainant herein the sum of $1,250 to be applied on the original purchase-money of said property, and this defendant further saith that he, together with his wife, joined with the said complainant in the execution of notes and mortgages for the payment of $2,300 of said purchase-money of said property and whereby this defendant became liable to said Tukey and Keysor for the said sum of
13 $2,300 of said purchase-money and still remains liable for said $2,300 of said purchase-money, save the sum of $1,500, which this defendant has paid, and which facts at all times have been well known to the complainant and still *is* well known to said complainant, and that said notes and mortgages are now held by the Omaha savings bank, and that this complainant has not in any manner assumed said mortgaged indebtedness, nor has he in any manner relieved this defendant from this defendant's obligation on account of this note and mortgage for said amount of said purchase-money, and that said complainant at no time claimed

or pretended to this defendant prior to the bringing of this action that he, the said complainant, was the sole owner of the property in controversy.

This defendant, further answering, saith that he did contribute his share of said purchase-money for said property, and denies the allegation in the bill to the contrary.

III. This defendant, further answering, saith that he admits that he did cause said tract of land to be laid out into lots and streets and to be platted as Patterson and Dickson place, but this defendant further saith that after having done so the said complainant wrote a letter to this defendant in which, among other things, he represented to this defendant that he was desirous of getting his money out of said property as speedily as possible, and further represented to this defendant that he was desirous of using the money so invested in said property elsewhere, whereupon this defendant, being desirous of accommodating said complainant as much as possible, made diligent effort to sell said property so as to realize for the complainant the amount of money invested therein by said complainant, and also to give said complainant a reasonable profit upon such investment, and this defendant, finding that it was impracticable to sell the said addition in the form of lots within a reasonable time, did offer said property in bulk for sale, and did succeed in obtaining an offer therefor in the sum of $6,000,
14 and on or about the 21st day of October, 1885, did notify said complainant that he, said defendant, had sold said property entire for the sum of $6,000, and that complainant was so satisfied with said offer of sale that this defendant was informed by said complainant that he, said complainant, was satisfied with such sale and conditions thereof; that this defendant immediately transmitted to the complainant the sum of $1,500, which was $250 more than said complainant had ever invested in said property, and that after deducting the necessary expense relating to the management and control of said property there was still due the complainant the sum of $224.18, which this defendant so reported to said complainant, and thereupon said complainant did join with this defendant in the execution of a deed whereby said property was conveyed to one Otto Boehme, who was the purchaser thereof.

This defendant, further answering, saith that it is untrue, as set forth in the bill of complaint, that the consideration of said sale to said Boehme was $10,000, but avers the fact to be that the consideration was the sum of $6,000, and no more or less; and this defendant admits that after the execution of said deed and at the request of said Boehme he, this defendant, did change the sum named in said deed from $6,000 to $10,000, but that the same was done with no intent to injure or defraud the complainant herein, and that no person was injured thereby, and was so done at the request of said Otto Bohme.

IV. This defendant admits that afterwards said Otto Bohme did convey said property to this defendant for the consideration of $6,500, but this defendant saith that the same was so done for the reason that after the said Bohme had purchased said property he became

dissatisfied with the said purchase, and, finding himself liable to be embarrassed by reason of said purchase and being desirous to resell said property, that this defendant did purchase said property from said Bohme, but this defendant further saith that said sale to said Bohme and from said Bohme back to this defendant were not by way of any contrivance or design between the parties thereto to cut off any interest of the complainant in and to said property, but avers the fact to be that said sale by this defendant to the said Bohme was a *bona fide* sale, and that said purchase by this defendant was a *bona fide* purchase of said property; and this defendant denies that he made any false or fraudulent representations or pretensions to said complainant touching said sale to said Bohme.

V. This defendant, further answering, saith that he admits that after he had repurchased said property from said Bohme he did cause the same to be replatted as East Side addition, but further saith that on or about the 17th day of February, 1887, this defendant made a contract of sale of all of said property to one Isaac Martin, but that after said date, said Martin having failed to make his payments pursuant to said contract of sale, this defendant did sell eight lots of said property to various and different persons, who became and are the owners thereof, but who are not made parties defendant in this suit, but that after eight of said lots had been so sold and conveyed by this defendant a mutual agreement was made between said Martin and this defendant whereby this defendant conveyed all of said property, save the eight lots sold, as above set forth, to said Martin by a warranty deed, with the usual covenamts, under date of June 4th, 1887, and whereby the legal title to all of said property had passed from this defendant on the said 4th day of June, 1887.

VI. This defendant further saith that he at all times truthfully and correctly reported to said complainant the facts relating to said purchase and said sale of said property and did pay over to said complainant the complainant's share of the profits arising out of said sale, and that by reason of the premises the said complainant has no interest whatever in said property, he, the said complainant, having received the entire sum of money coming to him, the said complainant, from the sale of said property, and that whatever securities were made in the hands of this defendant by reason of the sales of said property are individual and personal property of this defendant, and that this defendant should be in no manner called upon for any further accounting to the complainant herein.

VII. Said defendant, further answering, denies that the said complainant is entitled to the relief or any part thereof in the said bill of complaint demanded, and this defendant prays the same advantage of his aforesaid answer as if he had pleaded or demurred to said bill of complaint, and this defendant prays to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JNO. L. WEBSTER,
Def't's Solicitor.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 57, M. U. S. circuit court, dist. of Nebraska. Frank P. Dickson, plaintiff, *vs.* Richard C. Patterson, defendant. Answer. Filed Aug. 11, 1887. Elmer D. Frank, clerk. Jno. L. Webster, for def't.

Thereupon, afterwards, to wit, on the 27th day of August, 1887, replication was filed in said case; which said replication is in words and figures following, to wit:

In the United States Circuit Court, District of Nebraska.

The Replication of Frank P. Dickson, Plaintiff, to the Answer of Richard C. Patterson, Defendant.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exceptions which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say, that he will aver maintain, and prove his bill of complaint to be true, certain, and
17 sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein or hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

J. M. WOOLWORTH,
Sol. for Comp't.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 57, M. United States circuit court, district of Nebraska. Dickson *vs.* Patterson. Replication. Filed Aug. 27, 1887. Elmer D. Frank, clerk. J. M. Woolworth, solicitor for plaintiff.

Thereupon, afterwards, to wit, at the November term of said court, on the 19th day of December, 1887, the following proceedings were had and done in said cause as appears of record on folio 539, Journal "M," of said court, to wit:

FRANK P. DICKSON
vs.
RICHARD C. PATTERSON.

On motion of the complainant, by James M. Woolworth, solicitor, leave is granted him by the court to file supplemental and amended bill in six days.

Thereupon, afterwards, to wit, on the 23rd day of December, 1887, amended bill was filed in said case; which said amended bill is in words and figures following, to wit:

In equity.

To the honorable the judges of the circuit court of the United States for the district of Nebraska:

18 Frank P. Dickson, of Kansas City, in the State of Missouri, and a citizen of said State, brings this his amended bill against Richard C. Patterson, of the city of Omaha, in the State of Nebraska, and a citizen of said State, and Isaac Martin, who is a citizen of the State of Pennsylvania and whose residence is unknown to your orator.

And thereupon your orator complains and says:

I. On the 19th of May, 1885, Alonzo P. Tukey and William Keysor were seized in fee as tenants in common of all that certain piece and parcel of land situate in the county of Douglas and State of Nebraska, known and described as follows, to wit: The north half of the south half of the southwest quarter of the southwest quarter of section number twenty, in township number fifteen north, range number thirteen east, of the sixth principal meridian, containing ten acres, and the same is now of the value of twenty thousand dollars, and, being so thereof seized, the said defendant Patterson entered into negotiations with them for the purchase thereof.

Your orator and the said defendant Patterson had been friends for a long time prior thereto and had married sisters, and your orator had expressed to the said defendant a wish to join him in the purchase of a piece of property in or near Omaha, each contributing an equal part of the purchase price and being interested therein equally, with a view of laying the same out into lots as an addition to said city, the said defendant Patterson having been engaged in such adventures and having realized a large profit ther-from.

II. In consequence of such wish of your orator and on the day aforesaid, the said defendant addressed to your orator a letter dated on said day, wherein, referring to such your orator's desire, he stated

19 that he was about to buy ten acres of land for the purpose aforesaid, and in the course of the said letter he wrote: "This ten acres will cost $4,800, $2,500 cash. They will make 48 lots worth $250 each. If you want to go in it will cost you $1,250 cash, balance to suit. Please answer immediately what you wish, as there are two other parties waiting for me to give them an answer about going in along." Immediately thereupon your orator wrote a letter to the said defendant making further inquiries touching the matter. Thereupon, on the 22nd day of May, 1885, the said defendant addressed another letter to your orator, wherein he stated, among other things, that the expense of surveying, advertising, and platting this property for sale would be about $300 and the net profits at least $6,000, and that in his opinion they would not be called upon to pay the deferred payments, and he further stated what large profits he had realized from other like adventures, and

that other persons desired to join him and take an interest therein and urging your orator to do so.

III. Upon the receipt of the said letter and relying upon the statements made therein and the former one above referred to, your orator advised him, the said defendant Patterson, by postal card through the mail that he would accept the said defendant's proposition and take one-half interest in the said lands. Thereupon and on the 25th day of May, 1885, the said defendant addressed a letter to your orator acknowledging the receipt of the said card and further wrote as follows: "On the strength of your card I have notified my friend to-day that you had accepted my proposition and that therefore I could not take him in. I now have an abstract of the property in my possession and am about to make a careful examination of the same. As soon as I am satisfied that the title to this property is clear and unincumbered I am to pay over the cash payment of $2,500. That I expect to do by Thursday or Friday of this week. If I can draw on you by that time all will be right."

On the 29th day of the same month the said defendant addressed another letter to your orator, in which, after speaking of the title as shown by the abstract, he said, among other things, "I received your letter this morning and note that you say I can draw on you for $1,250, your one-half cash payment on the ten acres;" and also he stated that he enclosed therein a mortgage and notes for the deferred payments. Immediately thereupon your orator executed the mortgage and notes for the deferred payments upon the said property. The said mortgage bore date on the 10th day of June, 1885, and was executed by your orator and the said defendant Patterson and their respective wives, whereby they conveyed the premises first above described to the said Tukey and Keysor to secure the payment of $2,300 according to the tenor of two several promissory notes, which notes were made by the said defendant Patterson and your orator to the said Tukey and Keysor, payable respectively in one and two years—one for $— and the other for $—, with interest; and on the 30th day of said May the said Patterson drew his certain draft upon your orator, payable at sight to the order of the Commercial National Bank of Omaha, for $1,250 and delivered the same to the said bank, which endorsed the same payable to the order of the Bank of Kansas City, to which bank on the 1st of June your orator paid the sum therein mentioned.

IV. On the 5th of June following the said defendant Patterson addressed to your orator a letter acknowledging the receipt of the said mortgage and notes and of the said $1,250, and that he had notified the said Tukey and Keysor that he was ready to complete the said purchase as soon as they were able to show a good title to the said premises.

V. On the 9th of June, in the year aforesaid, the said Tukey and Keysor and their respective wives made to your orator and the said defendant their deed, with the usual covenants for title and warranty, bearing date on said day and conveying the said premises in consideration of the sum therein stated of $4,800, and at the same

time the said Patterson delivered to them the notes and
21 mortgage hereinbefore mentioned, which deed and mortgage were duly filed for record in the registry of said county on the day last aforesaid and were recorded therein, the former in the Book of Deeds 59, at page 444, and the latter in Book of Mortgages 25, at page 295, as by the said record or a certified copy thereof ready to be produced as your honors may direct will more fully appear.

Relying upon the statements of the said defendant and the agreement between him and your orator, your orator supposed and believed that the purchase price of said premises was $4,800, and that of that sum $2,500 was paid in cash, one-half thereof by your orator and one-half by the defendant and the balance in the notes and mortgages aforesaid, nor was your orator infirmed of the contrary until long thereafter, whereas in truth and in fact the whole purchase price of the said premises paid by the said Patterson to the said Turkey and Keysor was $3,600 and no more, of which sum the cash payment was $1,250 and no more, and all thereof was the money of your orator, advanced by him to the said defendant, as hereinbefore stated, the said notes and mortgage forming the balance of the said purchase price, and, save as he joined in the execution of the said notes and mortgage, the said defendant did not contribute anything whatever to the purchase price of the said lands and premises.

VI. In pursuance of the purpose, arrangement, and agreement between the said parties in that behalf the said defendant Patterson caused the said premises to be laid out into lots and streets and a plat thereof to be made, whereon the said premises were styled "Patterson and Dickson place," which was duly executed and acknowledged by them and recorded in the registry aforesaid on the 21st of August, in said year, in Book 60, at page 619. Thereafter the said defendant Patterson wrote your orator a large number of letters speaking in the most encouraging terms of the prospects of realiz-
22 ing large returns from the said adventure, nor at any time did he in any way intimate to your orator his desire to abandon the purpose and intention of the said parties to sell the said premises in lots nor had your orator any suspicion of such intention, but without consultation with your orator in that behalf and on the 21st day of October, 1885, the said defendant wrote to your orator a letter in which he stated the following: "I have sold our ten acres to-day for $6,000, an advance of $1,200. It did not turn out as well as I expected. There has been about ten thousand lots of this kind thrown on the market this summer. I did so well last summer on Patterson's subdivision that everybody for four miles around platted up their farms and sold lots at $125 and $150 each and even less. I thought if I couldn't do better than that I wouldn't sell at all in lots. This is a very handsome profit for the length of time we have held it. He pays $3,000 cash and the other $700 inside of six months and assumes the mortgage and all taxes. It nets us a little over $500 each profit."

On the 30th of October he further addressed a letter to your

orator enclosing therein his check for $1,500 and correcting a statement formerly made as to the net profits, and stating further that $224.18 was yet due and coming to your orator. The said defendant also enclosed to your orator a deed of the said premises, wherein the consideration therefor was stated to be $6,000, and by which when duly executed the said premises would be conveyed to one Otto Boehme, which deed your orator, together with his wife, duly executed and acknowledged and returned to the said defendant for the purpose of completing the said sale.

In doing so your orator relied upon the statement of the said Patterson that he had sold the said premises for $6,000 and he believed such to be the fact, and that the said defendant in the exercise of his judgment had actually made such sale. Thereupon the said defendant and his wife executed the said deed, but the
23 consideration mentioned therein was without your orator's knowledge or consent changed from $6,000, as the same was therein expressed when executed by your orator, to $10,000. The said deed bore date on the 28th of October, 1885, and on the next day was recorded in the said registry in Book of Deeds 62, at page 398. Your orator is informed and believes and charges that the said defendant Patterson did not in fact sell said premises to said Otto Boehme for any sum whatever, but caused the said deed to be made in order to acquire the legal title to the said premises. On the day last aforesaid the said Boehme made his certain deed of conveyance, bearing date on said day, whereby, for the consideration therein expressed of $10,000, he reconveyed the said premises and all thereof to the said defendant Patterson, which deed was duly recorded in the said registry on the following day in Book of Deeds 62, at page 429; and your orator charges that the deed last aforesaid was made in pursuance of the contrivances and design between the parties thereto prior to the aforesaid deed to the said Boehme—that is to say, to vest the title to the said premises in the said Patterson and cut off the undivided one-half interest in the said premises vested in your orator.

And your orator charges that all of the statements and representations made by the said defendant Patterson to your orator touching the sale by him of the said premises were false and fraudulent and made for the fraudulent purpose aforesaid and for no other purpose, and that between the said Patterson and the said Boehme no consideration whatever was paid on account of the said conveyances or either of them, except a small sum paid by the said defendant to the said Boehme for his assistance in carrying out the said contrivance and scheme.

VII. On the 23rd of February, 1886, said defendant induced the proper authorities to vacate the plat made by him and your orator on the 21st of August, 1885, as hereinbefore stated, and on
24 the 15th of May, 1886, he, the said Patterson, replatted the said lands under the name and style of "East Side addition" and caused the same to be recorded in said registry, and he is now offering the lots in the said addition for sale and has sold certain thereof for large sums of money, part of which has been paid in

cash and part is secured by notes of the purchasers and mortgages upon the said lots, and he has entered into and is about to enter into contracts for the sale of other of the said lots and thereby acquire and collect into his hands large sums of money and securities for a large amount and apply the same to his own use and benefit.

VIII. The said defendants pretended that on the 17th of February, 1887, the said Patterson made a contract of sale of all of said property to the defendant Isaac Martin, who, having failed to make his payment pursuant to said contract, entered into a further agreement with the said Patterson, whereby the said Patterson conveyed the premises above described, excepting eight lots theretofore sold by the said Patterson, by deed dated June 4th, 1887, whereby the legal title to all of said property passed from the said Patterson on said day, and by virtue of said deed said Martin now claims to be the owner of said premises in fee.

But your orator charges that the said deed was not made by the said Patterson until after the filing of your orator's original bill and was antedated for the purpose of defeating your orator in the recovery of the said premises in this suit, and that the said deed was not recorded in the registry of Douglas county until after the said original bill was exhibited in this court and the said Patterson was served with process of subpœna therein.

Wherefore your orator charges and insists that forasmuch as he paid all of the consideration for the said premises upon the
25 purchase thereof first above mentioned, and the said defendant Patterson advanced no part thereof, your orator is entitled to have all of the said premises and all the advantage which may arise from the said purchase; and forasmuch as the said defendant Patterson did not in point of fact make any sale of the said premises to the said Boehme, as he represented to your orator, and obtained your orator's deed for the said premises by false and fraudulent representations, your orator insists and charges that the said deed is void, and that your orator is entitled to have the said premises conveyed to him by the said defendants upon the payment, however, by your orator to the said defendant Patterson of what upon an accounting in that behalf it may be found your orator ought to reimburse him of the sums received by him as aforesaid, and the said defendant Patterson ought to come to an accounting with your orator in respect of whatever sums he has received from or on account of the said premises or the lots into which he has divided the same.

Wherefore your orator prays that the said defendants may, if they can, show why your orator should not have the relief herein prayed and answer all and singular the matters and things herein charged, but not under oath, their answers under oath being hereby expressly waived, and that an account be taken by one of the masters of the court under the directions of your honors of all sums received by the said defendant Patterson, and also of all sums received by your orator from him in and about the premises, and that it be ascertained what, if any, sum your orator ought to repay to the

said Patterson, and he now offers to pay such sums as soon as the same shall be ascertained, and that it be by the decree of your honors declared that by the purchase hereinbefore stated your orator became and is entitled to have all the benefits of such purchase, and that by the deed made to your orator and the said defendant Patterson the said Patterson became seize- in fee
26 of an undivided half of the premises first above described in trust for your orator and not otherwise, and that it be further declared that the deed made by your orator and his wife, together with the said defendant Patterson and his wife, to said Boehme and the deed made by the said Boehme to the said Patterson and the deed made by the said Patterson to the said Martin were and each of them is fraudulent and void, and that it be by your honors decreed that the said defendants convey the said premises to your orator in fee, save such lots only as the said Patterson has conveyed for a full and valuable consideration to persons and parties who were not informed of the facts hereinbefore stated, and that he pay to your orator whatever sum or sums he has realized from the sale of the said premises for any lot or lots into which he has divided the same as hereinbefore stated and assign to your orator all contracts, notes, and mortgages which he has taken on account of sales of any of the said lots, and pending this your orator's bill the said defendants be restrained from selling any of the said lots or receiving any money on account of the sales heretofore made by said Patterson from the purchasers, or selling, assigning, or transferring any contract, notes, mortgage, or other security taken by him for, upon, or on account of the sale of any of the said lots made by him, and that said injunction be made perpetual, and that the said defendants pay the costs of this suit, and that your orator have all such other and further relief as the circumstances of this case may require and is agreeable to equity and good conscience.

May it please your honors to grant unto your orator not only the writ of injunction issuing out of and under the seal of this honorable court, directed to the said defendants, Richard C. Patterson and Isaac Martin, their agents, attorneys, solicitors, and counsellors, enjoining them and each of them as hereinbefore prayed,
27 but also the usual writ of subpœna, issuing in like manner and directed to the said defendant-, commanding them that at a day therein to be inserted *he* be and appear before your honors in this honorable court, then and there to answer the premises and stand to, perform, and abide such order and decree as to your honors shall seem meet and equitable.

And your orator will ever pray, etc.,

J. M. WOOLWORTH,
Solicitor for Complainant and of Counsel.

Upon the back of said amended bill appear endorsemeLts in words and figures following, to wit: No. 57, M. United States c't c't, dist. of Nebraska. Frank P. Dickson *vs.* R. C. Patterson *et al.* Amended bill. Filed Dec. 23, 1887. Elmer D. Frank, clerk. J. M. Woolworth.

Thereupon, afterwards, to wit, on the 11th day of February, 1888, answer of Patterson to amended bill was filed in said case; which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

FRANK P. DICKSON, Complainant,
vs.
RICHARD C. PATTERSON *et al.*, Defendants.
} Answer to Amended Bill.

The Answer of Richard C. Patterson to the Amended Bill of Complaint of Frank P. Dickson, Complainant.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant for answer saith:

28 I. That he admits that Alonzo P. Tukey and William W. Keysor were seized in fee as tenants in common of the land in the bill of complaint described, and that on or about the 19 day of May, 1885, this defendant entered into negotiations with said Alonzo P. Tukey and William W. Keysor for the purchase of said property.

This defendant further saith that when he had ascertained the price for which the said property could be so purchased, to wit, the sum of $4,800, he did communicate to the complainant relating to said purchase, indicating to the said complainant that he, said complainant, might join with this defendant in the purchase of said property, and that this defendant did communicate to said complainant for the reason that prior thereto the said complainant had solicited of this defendant an opportunity to join with this defendant in the purchase of some real estate in the city of Omaha and where this land in controversy was located. This defendant did communicate to said complainant the amount of cash which said complainant should pay in order to be permitted to take an undivided half interest in said purchase, to wit, the sum of $1,250.

II. This defendant had arranged with said Tukey and Keysor for the payment of a part of said purchase-money in cash and for the payment of the remainder thereof by notes and mortgages to be signed and executed by the complainant and this defendant, providing this complainant joined with this defendant in said purchase. This defendant was willing that this complainant might unite in said purchase if this complainant would pay the sum of $1,250 in cash and not otherwise. This purchase was made by this defendant alone, and said complainant had no part or lot therein, whereby this defendant was under no obligation whatever to permit said complainant to become a party to said purchase, except as this defendant should so choose to do, and upon such terms and

conditions as this defendant should determine; and this de-
29 fendant having so determined upon what terms and conditions he would permit complainant herein to have any interest in said purchase, he did then communicate to said complainant that if he would advance the sum of $1,250 in cash to be applied on said purchase-money he could unite with this defendant in the execution of said notes and mortgages for unpaid purchase-money; that then said complainant should have an interest in said property and not otherwise.

This defendant, further answering, saith that there were other persons desirous to enter with this defendant in said purchase upon the same terms and conditions which this defendant gave to the complainant herein; that the complainant being fully advised in the premises and having agreed to accept the terms and conditions offered by this defendant, that negotiations with other parties were then and there terminated. This defendant further saith that he may have made by letter certain representations as to the probable net profits to be realized out of said property by advertising and platting the same; but this defendant further saith that he has no copy of such letter or letters to said complainant and is not now able to state with any precision what he may have said in said letters; but this defendant further saith that what he did state in said letters about the profits to be realized out of said transaction he believed then and there the same was true.

This defendant further saith that at said time speculation in lots in and about the city of Omaha was very great and the prospective profits to be realized from the platting of ground and selling of the same in the shape of lots was likewise very great, and this defendant then had reasonable ground to believe that very large profits would be made from said real-estate transaction.

This defendant further saith that the parties hereto did realize a fair profit from said real-estate speculation, as is hereinafter more fully disclosed; but this defendant further saith that after said
30 purchase a large amount of lands surrounding the city of Omaha was thrown upon the market in the shape of lots, so that the value of such lots did not reach the price which this defendant anticipated by reason of so large a number thereof being placed upon the market for sale, but that the same was no fault of this defendant and not in any manner charg-able to any neglect of this defendant.

This defendant admits that he did receive from the complainant herein the sum of $1,250 to be applied upon the original purchase-money of said property, and this defendant further saith that he, together with his wife, joined with the said complainant in the execution of notes and mortgages for the payment of $2,300 of said purchase-money of said property, and whereby this defendant became liable to said Tukey and Keysor for the said sum of $2,300 of said purchase-money, save the sum of $1,500 which this defendant has paid, and which facts at all times have been well known to the complainant and still *is* well known to said complainant, and that said notes and mortgages are now held by the Omaha savings bank,

and that this complainant has not in any manner assumed said mortgaged indebtedness, nor has he in any manner relieved this defendant from this defendant's obligation on account of this note and mortgage for said amount of said purchase-money, and that said complainant at no time claimed or pretended to this defendant prior to the bringing of this action that he, the said complainant, was the sole owner of the property in controversy.

This defendant, further answering, saith that he did contribute his share of the purchase-money for said property, and denies the allegations in the bill to the contrary.

III. This defendant, further answering, saith that he admits that he did cause said tract of land to be laid out into lots and streets and to be platted as Patterson and Dickson place, but this defend-
31 ant further saith that after having done so the said complainant wrote a letter to this defendant in which, among other things, he represented to this defendant that he was desirous of getting his money out of said property as speedily as possible, and further represented to this defendant that he was desirous of using the money so invested in said property elsewhere; whereupon this defendant, being desirous of accommodating said complainant as much as possible, made diligent effort to sell said property so as to realize for the complainant the amount of money invested therein by said complainant, and also to give said complainant a reasonable profit upon such investment, and this defendant, finding that it was impracticable to sell the said addition in the form of lots within a reasonable time, did offer said property in bulk for sale, and did succeed in obtaining an offer therefor in the sum of $6,000, and on or about the 21 day of October, 1885, did notify said complainant that he, said defendant, had sold said property entire for the sum of $6,000, and that complainant was so satisfied with said offer of sale that this defendant was informed by said complainant that he, said complainant, was satisfied with such sale and conditions thereof; that this defendant immediately transmitted to the complainant the sum of $1,500, which was $250 more than said complainant had ever invested in said property, and that after deducting the necessary expenses relating to the management and control of said property there was still due the complainant the sum of $224.18, which this defendant so reported to said complainant, and thereupon said complainant did join with this defendant in the execution of a deed whereby said property was conveyed to one Otto Boehme, who was the purchaser thereof.

This defendant, further answering, saith that it is untrue, as set forth in the bill of complaint, that the consideration of said sale to said Boehme was $10,000, but avers the fact to be that the consideration was the sum of $6,000 and no more or less, and this defend-
ant admits that after the execution of said deed, and at
32 the request of said Boehme, he, this defendant, did change the sum named in said deed from $6,000 to $10,000, but that the same was done with no intent to injure or defraud the complainant herein, and that no person was injured thereby, and that the same was so done at the request of said Otto Boehme.

IV. This defendant admits that afterwards said Otto Boehme did convey said property to this defendant for the consideration of $6,500, but this defendant saith that the same was so done for the reason that after the said Boehme had purchased said property he became dissatisfied with the said purchase, and, finding himself liable to be embarrassed by reason of said purchase and being desirous to resell said property, that this defendant did repurchase said property from said Boehme, but this defendant further saith that said sale to said Boehme and from said Boehme back to this defendant were not by way of any contrivance or design between the parties thereto to cut off any interest of the complainant in and to said property, but avers the fact to be that said sale by this defendant to said Boehme was a *bona fide* sale, and that said repurchase by this defendant was a *bona fide* purchase of said property, and this defendant denies that he made any false or fraudulent representations or pretensions to said complainant touching said sale to said Boehme.

V. This defendant, further answering, saith that he admits that after he had repurchased said property from said Boehme he did cause the same to be replatted as East Side addition, but further saith that on or about the 17 day of February, 1887, this defendant made a contract of sale of all of said property to one Isaac Martin, but that after said date, said Martin having failed to make his payments pursuant to said contract of sale, that this defendant did sell eight lots out of said property to various and different persons, who became and are the owners thereof, but who are not made
33 parties defendant in this suit, but that after eight of said lots had been so sold and conveyed by this defendant a mutual arrangement was made between said Martin and this defendant whereby this defendant conveyed all of said property save the eight lots sold as above set forth to said Martin by a warranty deed, with the usual covenants, under date of June 4, 1887, and whereby the legal title to all of said property had passed from this defendant on the said 4 day of June, 1887.

VI. This defendant further saith that he at all times truthfully and correctly reported to said complainant the facts relating to said purchase and said sale of said property, and did pay over to said complainant the complainant's share of the profits arising out of said sale, and that by reason of the premises the said complainant has no interest whatever in said property, he, the said complainant, having received the entire sums of money coming to him, the said complainant, for the sale of said property, and that whatever securities were made in the hands of this defendant by reason of the sales of said property are individual and personal property of this defendant, and that this defendant should be in no manner called upon for any further accounting to the complainant herein.

VII. This defendant, further answering, admits that he did make a sale of said premises to Isaac Martin, and did by deed dated June 4, 1887, convey said premises to said Isaac Martin, but, further answering, denies that said deed was made after the filing of the complainant's original bill herein, and denies that said deed was ante-

dated for the purpose of defeating the complainant in the recovery of said premises; but, upon the contrary, this defendant avers the fact to be that said sale was made in good faith and for a valuable consideration to the said Isaac Martin, and that said deed was so made and executed to said Martin long prior to the commencement of this suit.

34 VIII. This defendant, further answering, denies that the said complainant is entitled to the relief or any part thereof in the said bill of complaint demanded, and this defendant prays the same advantage of his aforesaid answer as if he had pleaded or demurred to said bill of complaint, and this defendant prays to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JNO. L. WEBSTER,
Solicitor for Def't.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 57, M. U. S. circuit court, district of Nebraska. Frank P. Dickson, plaintiff, *vs.* R. C. Patterson, defendant. Answer of Patterson to amended bill. Filed Feb. 11, 1888. Elmer D. Frank, clerk. Jno. L. Webster, sol. for def't.

Thereupon, afterwards, to wit, on the 15th day of February, 1888, answer of Isaac Martin was filed in said case; which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

FRANK P. DICKSON, Complainant,
vs.
RICHARD C. PATTERSON & ISAAC MARTIN, Defendants.
} Answer of Isaac Martin.

Answer of One of the Defendants, Isaac Martin, to the Amended Bill of Complaint of Frank P. Dickson, Complainant.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for

35 him to make answer unto, this defendant for answer saith:

1. That this defendant had no knowledge of the matters and things in said amended bill set forth relating to any dealing between the complainant, Frank P. Dickson, and the defendant Richard C. Patterson, and as in the bill of complaint set forth, except upon information by this defendant received from said Patterson, and from such information denies each and every allegation in the amended bill of complaint in that respect.

This defendant, further answering, saith that on the 17th day of February, 1887, said defendant Patterson made a contract of sale of the said premises in the bill described to this defendant, and that afterwards, on or about the 4th day of June, 1887, the said defendant Patterson sold and conveyed to this defendant by deed of warranty the said premises, whereby the legal title to all of said property passed from said defendant Patterson to this defendant, and that by virtue of said deed of conveyance this defendant now is the owner of said premises.

This defendant, further answering, saith that said deed from said Patterson to this defendant was made upon a good and valuable consideration; and this defendant, further answering, saith that at the time when he so purchased said property and received said deed of conveyance he had no knowledge of any of the matters and things in the bill of complaint set forth relating to the dealings between said defendant Patterson and the complainant, Frank P. Dickson, and this defendant further saith that he purchased said property in good faith.

2. This defendant, further answering, denies that said complainant is entitled to the relief or any part thereof in the said bill of complaint demanded, and this defendant prays the same advantage of his aforesaid answer as if he had pleaded or demurred to said
36 bill of complaint; and this defendant prays to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JNO. L. WEBSTER,
Solicitor for Def't.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 57, M. U. S. circuit court, district of Nebraska. Frank P. Dickson, plaintiff, *vs.* R. C. Patterson *et al.*, defendants. Answer of Isaac Martin. Filed Feb. 13, 1888. Elmer D. Frank, clerk. Jno. L. Webster.

Thereupon, afterwards, to wit, on the 18th day of February, 1888, replication was filed in said case; which said replication is in words and figures following, to wit:

In the United States Circuit Court, District of Nebraska.

The Replication of Frank P. Dickson, Plaintiff, to the Several Answers of Richard C. Patterson & Isaac Martin, Defendants.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exceptions which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say- that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual

in the law to be replied unto, and not herein or hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

J. M. WOOLWORTH,
Sol. for Comp't.

37 Upon the back of said replication appear endorsements in words and figures following, to wit: No. 57, M. United States circuit court, district of Nebraska. Frank P. Dickson *vs.* Richard C. Patterson *et al.* Replication. Filed Feb. 18, 1888. Elmer D. Frank, clerk. J. M. Woolworth, solicitor for plaintiff.

Thereupon, afterwards, to wit, at the May term of said court, on the 21st day of May, 1888, the following proceedings were had and done in said cause as appears of record on folio 793, Journal "M" of said court, to wit:

FRANK P. DICKSON
vs.
RICHARD C. PATTERSON *et al.* } 57, M.

On motion, leave is granted defendants to amend the answers herein in ten days from this date.

Thereupon, afterwards, to wit, on the 31st day of May, 1888, amendment to answer of Richard C. Patterson was filed in said case; which said amendment to answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

FRANK P. DICKSON, Complainant,
vs.
RICHARD C. PATTERSON *et al.*, Defendants. } Amendment to Answer.

Amendment to the Answer of Richard C. Patterson to the Amended Bill of Complaint of Frank P. Dickson, Complainant.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said complainant's said amended bill of complaint contained, for further answer thereto or unto so much and such parts thereof as this defendant is advised is or are
38 material or necessary for him to make answer unto, this defendant, for amendment to his original answer to the amended bill herein, says—

That he is informed and believes that the complainant herein

pretends to have discovered the alleged fraud set forth in complainant's bill on or about the month of February, 1886, and yet, notwithstanding said pretended discovery of said alleged fraudulent acts of this defendant, said complainant, on the discovery thereof, made no tender to this defendant of the money received by said complainant from this defendant on or about the 30th day of October, 1885, as said complainant's just and proper share of the proceeds of the sale of said land, nor has said complainant at any time since the said pretended discovery of said alleged fraudulent acts and doings of this defendant returned or offered to return to this defendant said share of the proceeds of the sale of said land nor any part thereof, but said complainant has retained and still retains said money under a claim of right thereto.

Further answering, this defendant says that at different times subsequent to the time of the pretended discovery of said alleged fraudulent acts of this defendant said complainant made demands upon this defendant for the payment to said complainant of the amount claimed still to be due said complainant as a part of the proceeds of the sale of said land, to wit, the sum of $112.93. On the 12th day of May, 1888, said complainant addressed a letter to this defendant, in which he said: "There is yet due me on your due bill of October 30 last $111.68, with interest to date at 10 % per annum, $1.25, $112.93, which you can remit me for in eastern exchange. This was due on the first, but was overlooked by me or would have been attended to before."

Subsequently, to wit, on the 18th day of May, 1886, said complainant addressed a postal card to this defendant, in which
39 he said: "Please give my letter of the 12th instant attention."

Subsequently thereto, to wit, on the 4th day of September, 1886, said complainant addressed a letter to this defendant, in which he said: "Have been patiently awaiting to hear from you again with draft enclosed for $112.93 and interest due me."

Subsequently thereto, to wit, on the 14th day of September, 1886, said complainant addressed a letter to this defendant, in which he said: "Kindly let me know by return mail whether you intend paying me the amount, $112.93, and interest and when. It is long past due and I should like it at once."

Said defendant, further answering, says that said $112.93 was justly due said complainant as the balance of his share of the proceeds of said sale, but said defendant did not forward the same to said complainant for the reason that there was due to said defendant from said complainant on a general balance of accounts between them a much greater amount than the sum of $112.93.

Wherefore and forasmuch as said complainant has required and accepted and has at all times retained his share of the proceeds of the sale of said land and now does and at all times has enjoyed all the advantage and benefit of said sale, said complainant ought not to be allowed to maintain his action herein.

And this defendant prays the same advantage of his aforesaid answer to co-plainant's amended bill of complaint as if he had pleaded or demurred thereto; and this defendant prays to be dis-

missed with his reasonable costs and charges in this behalf most wrongfully sustained.

Upon the back of said amendment appear endorsements in words and figures following, to wit: No. 57, doc. M. In the United States circuit court for the district of Nebraska. Frank P. Dickson, plaintiff, *vs.* Richard C. Patterson *et al.*, defendants. Amendment to answer of Richard C. Patterson. Filed May 31, 1888. Elmer D. Frank, clerk. Jno. L. Webster.

40 Thereupon, afterwards, to wit, on the 5th day of July, 1888, replication was filed in said case; which said replication is in words and figures following, to wit:

In the United States Circuit Court, District of Nebraska.

The Replication of Frank P. Dickson, Plaintiff, to the Amendment to the Amendment *to the Answer of Richard C. Patterson, Defendant.*

The repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say- that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein or hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

J. M. WOOLWORTH,
Sol. for Compl't.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 57, M. United States circuit court, district of Nebraska. Frank P. Dickson *vs.* Richard C. Patterson. Replication. Filed Jul- 5, 1888. Elmer D. Frank, clerk. J. M. Woolworth, solicitor for plaintiff.

Thereupon, afterwards, to wit, on the 17th day of August, 1888, deposition on behalf of plaintiff was received and opened as per stipulation of parties February 7th, 1889; which said deposi-
41 tion is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

FRANK P. DICKSON, Complainant,
vs.
RICHARD C. PATTERSON *et al.*, Defendants. } No. —. In Chancery.

Testimony taken before Chas. A. Potter, examiner in chancery of said court, the 26th day of April A. D. 1888, pursuant to annexed notice and order.

Present: Offutt & English appeared for the plaintiff; J. L. Webster, Esq., appeared for defendant-.

ALONZO P. TUKEY, a witness on behalf of the plaintiff, being first duly cautioned and sworn, was examined in chief by Mr. OFFUTT, — deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

My name is A. P. Tukey; am 43 years of age; live at 2541 Chicago street, in the city of Omaha; am engaged in the real-estate business and have been for a year.

1 Q. Where were you residing in the summer of 1885?

A. In Omaha, Nebraska.

2 Q. Did you in the summer of 1885 have any transactions with the respondent Patterson in regard to the sale of any real estate in Douglas county? And, if so, state when and whether or not you made any transfer of real estate.

A. I made a transfer to Mr. Patterson in June, 1885, I think, in connection with Mr. Keysor, of some real estate—ten acres—at the north half of the south half of the southwest quarter of the southwest quarter of section 20, township 15, range 13, I believe, is the description of it; along, I think, some time in May we made the sale of Mr. Patterson. If I am not mistaken, it was along in the summer, from the 10th to the 15th of May, 1885.

42 3 Q. To whom was the deed made by yourself and Mr. Keysor?

A. It was made to Mr. Patterson and Frank E. Dickson, I think it was.

4 Q. How many acres were there in the tract?

A. Ten, I believe.

5 Q. What was the consideration of the sale of this land to Mr. Patterson?

A. $3,300.00.

6 Q. What were the terms of sale?

A. One thousand dollars cash and then a mortgage was taken for $2,300.00. $700.00 was due in one year from date and I think it was the 10th of June, 1885—that is the way I have in on my book—and $800.00 in two years and $800.00 in three years at 8 per cent. interest per annum. The note was payable on or before, I believe.

7 Q. Eight per cent. interest from date?

A. Yes, sir; from the date of June, I think.

8 Q. What was the date of the deed from yourself and Mr. Keysor to Patterson & Dickson?

A. I could not tell you the date of the deed. I have the notes listed on my bills-payable book as having been dated June 10th, and I did not look any further. That is the date I have on my book.

9 Q. How long were the negotiations pending for the sale of this land by yourself and Mr. Keysor to Patterson and Dickson prior to the execution and delivery of the deed?

A. I think perhaps a month or nearly so the negotiations were going on.

10 Q. Did you ever see Mr. Dickson?

A. No, sir; not that I know of.

11 Q. Was any sum more than the thousand dollars paid you in cash?

A. No, sir.

43 12 Q. How did you learn that Mr. Dickson had any interest in the land?

A. I do nor know anything about Mr. Dickson. I never knew anything about him in it, I think, until about the 10th of June, when, I think, the papers were passed. I did not know Mr. Dickson until that time; possibly I had heard some one mention him, but I do not know.

13 Q. Was Mr. Dickson present when the papers were executed?

A. No, sir.

14 Q. Who told you of the interest of Mr. Dickson in the property?

A. As I remember it, the name of Mr. Dickson came to me when I saw the deed brought by Mr. Patterson. I am not absolutely sure of that, but that is my impression that that is the first I knew who was to be with Mr. Patterson.

15 Q. Who prepared that deed for you to sign?

A. Mr. Patterson did, I think.

16 Q. What was the consideration stated in the face of the deed for the sale of the property to you?

A. It was $4,800.00, I think.

17 Q. How came the consideration to be stated in the deed at $4,800.00, when, in fact, it was only $3,300.00?

A. Mr. Patterson asked me if I had any objection to the consideration. I told him I did not care anything about the consideration; to make it whatever he pleased.

18 Q. When was it that Patterson asked you that with reference to the time the deed was executed?

A. It was about the time the papers were passed, as I remember it.

19 Q. Did you ever have any conversation with Mr. Patterson, either before or after the execution of this deed, when anything was said in regard to your telling any one the facts about the transaction?

44 A. No, sir.

20 Q. How was the thousand dollars paid to you, in cash or by Mr. Patterson's check?

A. As I remember it, it was paid in currency.

Cross-examined.

By Mr. WEBSTER:

21 Q. When was this money paid?

A. In June; I think it was paid about the 10th of June.

22 Q. Negotiations had been going on during the month of May?

A. Yes, sir.

23 Q. Had you been negotiating with other parties for this same property, or had other parties been taking options on this same property?

A. No, sir.

24 Q. Had you not had some talk with Mr. Sauer?

A. Mr. Sauer had it for sale, the real-estate man.

25 Q. You did not pay Mr. Sauer any commissions on this sale?

A. No, sir.

26 Q. How long had Mr. Sauer had this land for sale—some time, was it not?

A. Yes; I think a year ago.

27 Q. And did Mr. Sauer receive any commission?

A. If Mr. Sauer received any commission, they were paid by Mr. Patterson; they were not paid by me.

28 Q. Do you not know what amount of money Mr. Patterson may have paid Mr. Sauer on account of this deal?

A. No, sir.

29 Q. Whatever was paid to Mr. Sauer was in addition to the $3,300.00 paid to you?

A. Yes; that would be it.

30 Q. And the amount of that you do not know?

A. No, sir.

45 Redirect examination.

By Mr. OFFUTT:

31 Q. Did Mr. Sauer have any option on this property?

A. No; he had a price at which he could sell it; he had no option.

32 Q. Do your know whether or not Mr. Patterson and Mr. Sauer had any controversy as to the amount of commissions Mr. Sauer should have for this sale?

A. No; I do not.

Recross-examination.

By Mr. WEBSTER:

33 Q. It was Mr. Sauer who had this land for sale that took Mr. Patterson out to look at the land?

A. I think it was Mr. Sauer who introduced Mr. Patterson to us as the purchaser of the property.

34 Q. And before that time, that conversation, did you not gather that Mr. Sauer had been showing this property to Mr. Patterson with a view of making a sale of it?

A. Yes, sir.

35 Q. You do not know how long these negotiations had been going on between Mr. Patterson and Mr. Sauer before he brought Mr. Patterson to you?

A. No, sir.

36 Q. You never took Mr. Patterson out to show him this land at all?

A. No, sir.

37 Q. When Mr. Sauer did bring Mr. Patterson to you before this deal was closed didn't you make a preliminary contract between you and Mr. Patterson by which Mr. Patterson paid down to you the sum of $100.00 before the deal was finally closed and the deed was made?

A. I cannot say whether there was $100.00 paid or not. I
46 have an impression that there was, but I won't swear that there was.

28 Q. You did understand, did you not, that if Mr. Sauer got a purchaser for the property he was to have the same commission or bonus on this transaction, and that whatever was paid was paid by Mr. Patterson?

A. Yes, sir.

39 Q. But the amount that he was obliged to pay you do not know?

A. No, sir.

Redirect examination.

By Mr. OFFUTT:

40 Q. There is a matter that I forgot to ask you on the direct examination which I will ask now. When you first learned that Mr. Patterson wanted to purchase this property, had or not Mr. Patterson agreed *that* Mr. Sauer or any one else what he would pay for it, or were the terms arrived at after you and Mr. Patterson had had a talk?

A. I know nothing of any arrangement definitely between Mr. Patterson and Mr. Sauer. The arrangement which I made was made with Mr. Patterson. Mr. Sauer had dropped out of the deal and the talk was done directly with Mr. Patterson after Mr. Sauer said Mr. Patterson was the man that he had in view for the purchase of the property.

41 Q. The force of my question was, Had Mr. Patterson agreed with Mr. Sauer to pay any particular or stated price for the property before Mr. Patterson talked to you about the purchase of the property, or was the price for the property agreed upon between you and Mr. Patterson?

A. Mr. Patterson had made no agreement with Mr. Sauer, to my knowledge. I made the agreement with Mr. Patterson. The price

at which we sold it was made between Mr. Patterson, Mr. Keysor, and myself.

47 Recross-examination.

By Mr. WEBSTER:

42 Q. You don't know, then, what agreement may have been entered into between Mr. Sauer and Mr. Patterson before Mr. Sauer brought Mr. Patterson to you?

A. No, sir.

43 Q. Nor what part of the entire money was to go to Mr. Sauer aside from what was arranged between you and Mr. Patterson; you don't know anything about that?

A. No, sir.

WILLIAM KEYSOR, sworn for the plaintiff, examined in chief by Mr. OFFUTT, testified as follows:

My name is William Keysor; I reside in Omaha, Nebraska; am 35 years of age and attorney at law; have resided in Omaha nearly five years; have been engaged in the practice of law ever since I came to Omaha. I know the respondent, R. C. Patterson, and the complainant, Frank P. Dickson—I do not know that I ever saw him.

44 Q. Are you the same Keysor who, on or about the 10th of June, 1885, made a conveyance of certain real estate in the county of Douglas, State of Nebraska, to R. C. Patterson and the complainant, Frank P. Dickson?

A. I made a conveyance, in company with Mr. Tukey, to Mr. Patterson and Mr. Dickson.

45 Q. When was this conveyance made and what land did you convey?

A. It was made in June, 1885. I don't remember the exact dates from memory, but the land was 10 acres lying south of Leavenworth street, out near the Catholic cemetery. I could not give the description of the land without refreshing my memory.

48 46 Q. Did you ever at any time make any other than one conveyance of land to Patterson and Dickson?

A. No, sir.

47 Q. What was the consideration for this conveyance, and what were the terms of the payment?

A. The consideration was $3,300.00, one thousand dollars cash and $2,300.00 in notes secured by mortgage, and the payments were in one, two, and three years; but whether the first payment was seven or eight hundred dollars I do not remember.

48 Q. There was one $700.00 and two $800.00 notes?

A. I think there were, at eight per cent., payable on or befor- one, two, and three years after date.

49 Q. Who made the negotiation for the sale of the land, and with whom did Patterson & Dickson or either of them agree upon the price?

A. The land was listed with Bedford & Saurer for sale, and some time in the early part of May Mr. Bedford notified either myself or

Mr. Tukey that he had a customer for the land, and soon afterwards told us it was Mr. Patterson. From that time until the sale took place I had some conversation with Mr. Patterson about it, and I supposed Mr. Sauer had some talk. I do not know just how much Mr. Sauer had to do with it.

50 Q. Was the *conversation* that Mr. Patterson was to give for the land agreed upon at the time that you first learned that Mr. Patterson desired to purchase the lands?

A. It was not agreed upon between us; no.

51 Q. Were there or not any negotiations between Mr. Patterson and yourself and your partner, Mr. Tukey, looking to an arrival at an agreement upon the consideration?

A. I do not think that Mr. Patterson and Mr. Tukey and myself ever met together. I know there were several conversations between Mr. Patterson and myself as to the consideration. Mr.
49 Patterson offered us quite a sum. I think it was less than the price we had it listed at, and my remembrance is that the last conversation that I had with Mr. Patterson was that if we took $3,300.00 for the land that he must pay all of the expenses connected with the transfer—that is, we were to have $3,300.00 net and he was to settle with Mr. Sauer whatever claim he had for commissions.

52 Q. Do you remember the prices at which you had the land listed? And, if so, state.

A. I think it was listed at four thousand dollars, but I won't be positive about that; I think it was four thousand dollars, and Mr. Sauer wanted to know if we would take $3,500.00 and we finally agreed to do that, and then this further drop in the price was asked and we finally agreed to that, with the understanding that Mr. Patterson was to pay all commissions and all expenses connected with it. We were to have that amount of money net.

53 Q. How was the cash payment made, by check or otherwise?

A. My remembrance is it was in money. I have no remembrance of ever having Mr. Patterson's check at all.

54 Q. Was the complainant Dickson present at any of the negotiations for the purchase?

A. No; I never saw Dickson that I know of.

55 Q. When did you learn that Mr. Dickson had any interest in the purchase?

A. I could not say; I had several conversations with Mr. Patterson, and in one of those conversations some time before the matter was closed up he told me that he was buying the land in company with *any*body else; whether he mentioned Mr. Dickson's name or not I do not remember, but I know before the deal was finally closed up that he told me that he was buying it with his brother-in-law, who lived in Kansas City.

50 56 Q. How long was it from the time you first met Mr. Patterson and begun negotiations with him in regard to the sale of the land before an agreement was had as between Mr. Patterson, yourself, and Mr. Tukey as to what the consideration should be?

A. I could not say positive; but I think it was two or three weeks.

57 Q. What was the consideration stated in the deed from yourself?

A. It was $4,800.00.

58 Q. How does it happen that there is a difference between that consideration actually paid or agreed to be paid and what was stated in the deed?

A. All I know about that is that either Mr. Patterson or Mr. Sauer, I don't remember which it was, told me that the consideration was to be $4,800.00 or $5,000.00 in the deed, and I said, I do not care; I know that we have a good title and I had just as soon warrant it for that amount of money as for 33 or $3,500.00.

59 Q. Who prepared the deed?

A. I do not know who prepared the deed; it came there from Mr. Sauer or Mr. Patterson; I know that we did not do it.

60 Q. What commission was Mr. Sauer to have for his help in negotiating this sale?

A. I do not know.

61 Q. Do you know whether there was any difference between Bedford and Sauer and Mr. Patterson in regard to the commissions that Bedford and Sauer should have for negotiating this sale?

A. I know they had some conversation or some negotiation between them as regarded the commission and I went to Mr. Sauer and told him that if this trade went through with Mr. Patterson that he must look to Mr. Patterson for the commissions; that we made the trade with that distinct understanding, and if he did not pro-
51 pose to do that the trade was off and we would not make it, and Mr. Sauer said, very well, if they put the trade through, if we would sell it for $3,300.00, he would look to Mr. Patterson for his commission; that was the way I understood it.

62 Q. As to whether or not either after you made the deed or before there was any difference between Mr. Patterson and Mr. Sauer as to what rate of commission Mr. Patterson should pay Mr. Sauer, will you please state what, if anything, you know in regard to that?

A. I think that in the conversation I had about the time the deal was closed that Mr. Patterson stated that he thought he could not get a settlement for less than full commissions.

63 Q. Do you know what were the commissions known and accepted among real-estate agents at that time and at this place generally as full commissions?

A. Yes, sir.

64 Q. What were they?

A. Five per cent. on the first thousand and two and one-half per cent. on subsequent amounts.

65 Q. Did Mr. Patterson say anything to you as to how much he thought he could get Mr. Sauer to take—what commissions? And, if so, state what he said.

A. I do not know; I do not remember positive that he said any sum, but thought he could settle with Mr. Sauer, but my remembrance is that he said that he thought he could settle with Mr. Sauer

for half commissions or less. It was a kind of a hazy conversation. I do not remember it distinctly; I did not pay much attention to it, it not being a part of my trade to pay a commission.

66 Q. In what business was Mr. Patterson engaged at the time of these negotiations?

A. I think he was in the real-estate business.

67 Q. In what business was Mr. Sauer engaged and with whom, if any one?

52 A. He was engaged in the real-estate business and was then in the firm of Bedford & Sauer, real-estate agents.

68 Q. Who was Mr. Bedford? What is his full name?

A. J. W. Bedford. They call him Jeff.

69 Q. What is Mr. Sauer's full name?

A. I think it is Abraham R. Sauer. I do not know positive, but I think that is his name, as I have seen it in the transfers.

70 Q. Do you know whether or not there was any rule or well-known custom existing between the real-estate agents and brokers generally in Omaha at that particular time in regard to the charging of commissions on sales made by a real-estate agent to another real-estate agent?

A. No; I did not know about it at that time. I had not heard much about agents dealing with each other and did not know what the custom was. I know what it has been in the past year or two, but did not know at that time, because I had been in Omaha only a short time.

71 Q. What has it been in the last year or two?

A. So far as I know they have charged half commission.

72 Q. Is it not a fact that the difference between Mr. Patterson and Bedford & Sauer was as to whether Mr. Patterson should pay full commission or half commission?

A. I never had any conversation with Mr. Sauer about the commission, except to notify him that he must look to Mr. Patterson for his pay; and the conversation I had with Mr. Patterson about the commission I have already stated as near as I remember.

73 Q. What was done with the notes that were given for the deferred payment on this land?

A. We kept those notes about a year, or nearly so—it may have been a little longer—and then they were sold to the Omaha savings bank.

53 Cross-examined by Mr. WEBSTER:

74 Q. You do not know of your own knowledge how much money may have been paid to Mr. Sauer in addition to the $3,300.00 that was paid to you?

A. No, sir.

75 Q. You do not know what price Mr. Sauer had told Mr. Patterson he could have the land for?

A. No, sir.

76 Q. But you do know, do you not, that Mr. Sauer had procured Mr. Patterson to buy the land and brought Mr. Patterson to you to make the final negotiations?

A. Yes, sir.

77 Q. What arrangement had taken place between Mr. Sauer and Mr. Patterson, whatever had taken place before coming to you, you do not know?

A. I never heard them say anything.

78 Q. That Mr. Patterson and Mr. Sauer did not make known to you?

A. No, sir.

79 Q. So when Mr. Patterson came to you they came to make the best deal they could with you with reference to nothing that had gone on between Mr. Patterson and Mr. Sauer before coming to you?

A. Yes; I suppose so.

80 Q. And it was distinctly understood that you should have nothing to pay to Mr. Sauer and no moneys to disburse on account of this trade?

A. Yes, sir.

81 Q. You were to have personally so much money?

A. Yes; that was the distinct understanding, and I took steps at once to notify Mr. Sauer.

54 82 Q. Prior to that time you had got it in conversation that Mr. Patterson had had negotiations with Mr. Sauer?

A. Yes, sir.

83 Q. The legal title was in your name and Mr. Tukey's?

A. Yes, sir.

Redirect examination.

By Mr. OFFUTT:

84 Q. Mr. Webster—Webster asked you if you knew that Mr. Sauer had procured Patterson to buy the land and in answer you said yes. What did you mean by that?

A. We had listed the property with Bedford & Sauer to sell. Mr. Sauer told me along in the early part of May that he thought he had a customer for that land, and a few days afterwards he came to me and said he had a customer for the land and it was Mr. Patterson, and I meant by that that he had brought us a customer, as we supposed.

Recross-examination.

By Mr. WEBSTER:

85 Q. You do know, do you not, that real-estate men were in the habit of getting out of a transaction all the money that they could sometimes?

Objected to as immaterial and incompetent.

A. Yes, sir.

86 Q. It was not controlled at all by the persons who owned the land or held the legal title?

A. I know that has been done.

87 Q. It was a common occurrance, was it not, about the time this trade was made before and after that time in this city?

Objected to as irrelevant, immaterial, and incompetent.

A. I do not know as it was a common occurrance at that time, but I knew at that time of a number of instances where it had been done.

55 88 Q. So you do not know but Mr. Sauer may have done that same thing in this trade?

A. He may have done it, but we never knew it if they did.

89 Q. They do not always disclose to the man that holds the legal title what arrangements they have made or prices they put on the lands?

A. No, sir.

90 Q. That is, between the purchaser and the agents?

A. Yes, sir.

Redirect examination.

By Mr. OFFUTT:

91 Q. Since Mr. Webster theorizes, permit me to theorize. I will ask you if such instances as you speak of are usually where the purchaser, after negotiating with the agent, comes to the owner of the land and haggles with him for two or three weeks over the price and attempts to jew him down below the prices that the real-estate agent had made him.

A. No; I don't think they are usually.

FRANCIS S. WESSELS, sworn for the plaintiff, examined in chief by Mr. OFFUTT, testified as follows:

My name is Francis Wessels; my age is 38 years; I reside in Omaha, Nebraska, and have been there for five years continuously, but off and on longer.

92 Q. What is your occupation, and how long have you been engaged in that business?

A. I am an attorney for the Omaha savings bank, and have been for five years, and manager of it for about a year and a half.

56 93 Q. Do you know the respondent R. C. Patterson?

A. Yes, sir.

94 Q. Do you know whether or not the Omaha savings bank has at any time purchased from A. P. Tukey and William W. Keysor any promissory notes which were secured by a mortgage upon ten acres of land in the county of Douglas, which ten acres of land is known as the north half of the south half of the southwest quarter of the southwest quarter of section 20, township 15 north, of range 13 east?

A. I recollect that the bank purchased notes upon ten acres in section 20, but just what piece I could not recollect without reference to the records.

95 Q. How many notes, and for what were they given?

A. The notes aggregated $2,300.00; two for $800.00 and one for $700.00; the date I do not recollect.

96 Q. Can you refer to anything from which you can state the date?

A. There is one note still remaining unpaid. Of course that would show.

97 Q. Do you remember whether it was dated June the 10th, 1885, or anywhere along there?

A. My very strong recollection is that it was some time early in June.

98 Q. Of what year?

A. 1885; for one, two, and three years.

99 Q. Did you ever have any conversation with R. C. Patterson, the respondent, in regard to the satisfaction of any one of these notes or the release of the lien of the mortgage upon the land which was mortgaged to secure the payment of the note?

A. I had a conversation with regard to a partial release.

100 Q. When was this conversation?

A. That is only from memory and what the books show in
57 the bank. I don't recollect, as an independent proposition, when it was; but I know when the release was made.

101 Q. When was the release made?

A. April 13th, 1887.

102 Q. On the west half of the land involving all of the ten acres?

A. I know that the release was made on April 13th, 1887.

103 Q. What time with reference thereto was the conversation that you had with Mr. Patterson?

A. It was a few days before; possibly Mr. Patterson may have said that he was to ask it or would request it when he paid the second note or something about that in conversation when we met before; but my recollection is that for some four or five days before we saw each other, perhaps two or three times in regard to it.

104 Q. What was the conversation? State as fully as you can all that was said.

A. The idea was that we had bought the mortgage of $3,300.00 and one note had been paid and the second would be paid, and that then he could look for his conveyance and release — the west half of the land, and I said that of course — he had paid so much of the money that he was entitled to consideration in that respect, but it would involve trouble, and if he was willing to pay for that or give me the time that I would oblige him. He then said that he would furnish the abstract and draw the release and present it to me and did so, and I executed it.

105 Q. Was any fee charged for that?

A. There was talk of a fee—I am not clear; there was talk of a fee and perhaps Mr. Patterson said that he would supply the abstract, bringing the thing down to date to save me the time and trouble, and would furnish the release in blank ready for the execution, and perhaps on that ground was given up. It was not taken by
58 me, sure; whether it was paid to the bank I do not know, but I have no recollection of its being taken by me.

106 Q. When was the second note paid?

A. At the time of the release.

107 Q. By whom?

A. Mr. Patterson; of course, I am not clear on that, but that would be the usual course that it would take at that time.

108 Q. Was anything said by Mr. Patterson at the time that he applied for this personal lease with reference to his reason for wanting it?

A. None that I recollect of, except we looked at the map and talked of the land as it appeared upon the map, and he said that this left ample security; the east half and the contemplated platting of this was spoken of incidentally — is about all that I recollect.

109 Q. Was there anything said about the contemplated platting as being the reason for wanting the partial release or not?

A. I could not say that it was definitely.

110 Q. Did Mr. Patterson furnish you the abstract at the time of furnishing this release?

A. It certainly came in. He furnished it or brought it personally or sent it down; I think that he was there with it.

111 Q. Is it in the possession of the bank now?

A. No; I think it was returned to him at the time.

112 Q. In whom did that abstract show the title to be at the time of this release, namely, on April 13th, 1887?

A. My very strong impression is that he left it with Mr. Patterson.

The cross-examination of this witness is waived.

59 JOHN F. WILBER, sworn for the complainant, examined in chief by Mr. OFFUTT, testified as follows:

My name is John F. Wilber, and 38 years of age; an cashier of the Omaha savings bank; know the respondent, R. C. Patterson.

113 Q. Did the Omaha savings bank make a purchase of any notes signed and executed by the respondent, R. C. Patterson, and the complainant, Frank P. Dickson, to William W. Keysor and A. P. Tukey?

A. Yes, sir.

114 Q. What were the dates of those notes and amounts?

A. I brought the papers along with me; I can give the dates. I have not the notes; at least, I have one note of the series; that is all we have now.

115 Q. Dated June 10th, 1885?

A. Yes; three notes, one for $700.00 and two for eight hundred.

116 Q. When did the seven-hundred-dollar fall due?

A. That was the first note; a year from June 10th, 1885.

117 Q. Do you remember of ever having any conversation with the defendant Paterson with regard to releasing a lien upon any portion of the land which was mortgaged to secure the payments of these notes?

A. Yes; I remember that fact of our releasing or the application for the release.

118 Q. When was the application made with reference to the date the release was made—that is to say, how many days before the release was made did he apply to you for a release?

A. I could not say exactly; I would say it might be two weeks; anywhere from a week to two weeks.

119 Q. What was the date of the release?

A. I cannot give you that without referring to the memo-
60 randum I made at that time. (Witness refers to memorandum.) It was April 13th, 1887.

120 Q. How much of the land did he wish released by the bank?

A. My memorandum was simply in rough for the purpose of the clerk entering it on our mortgage record. I entered it or had it done according to that.

121 Q. I do not care for the particular part, but what I want to know was what portion of the tract?

A. A half, about.

122 Q. Was or was not any payment made to the bank by Mr. Patterson or any one for the purpose of obtaining this release? Was there any fee paid to the bank in order to secure this release?

A. I think most of my conversation was in regard to a five-dollar fee; we charged for making out the papers and looking up to see if we had a right to release.

123 Q. Who paid that five dollars?

A. Mr. Patterson.

124 Q. Who paid the note which fell due on June 10th, 1887, and when was it paid?

A. That is the second note; my recollection of that was a part of our stipulation of the release that that note should be paid, reduce the loan so much, and that it was paid at or about the time the release was made.

125 Q. Who paid it?

A. A Mr. Patterson.

126 Q. What date?

A. I suppose the same date that the release was made; my memorandum refers to the release.

127 Q. When was the interest payable upon the note which has not yet been paid?

A. A year from the date I stated; I think it was June 10th.

128 Q. When was the interest accuring on June 10th, 1887,
61 on the note last falling due paid?

A. I think it was paid on the day it was due, but I have an endorsement on the note which shows.

129 Q. Will you look it up and see?

A. It is about June 10th, 1887.

130 Q. Who paid it?

A. My recollection is that Mr. Patterson paid it.

181 Q. How did he paid it, in cash or by check?

A. My recollection is it was in a check.

132. Q. On what bank?

A. I could not say.

106 Q. When was the second note paid?

A. At the time of the release.

107 Q. By whom?

A. Mr. Patterson; of course, I am not clear on that, but that would be the usual course that it would take at that time.

108 Q. Was anything said by Mr. Patterson at the time that he applied for this personal lease with reference to his reason for wanting it?

A. None that I recollect of, except we looked at the map and talked of the land as it appeared upon the map, and he said that this left ample security; the east half and the contemplated platting of this was spoken of incidentally — is about all that I recollect.

109 Q. Was there anything said about the contemplated platting as being the reason for wanting the partial release or not?

A. I could not say that it was definitely.

110 Q. Did Mr. Patterson furnish you the abstract at the time of furnishing this release?

A. It certainly came in. He furnished it or brought it personally or sent it down; I think that he was there with it.

111 Q. Is it in the possession of the bank now?

A. No; I think it was returned to him at the time.

112 Q. In whom did that abstract show the title to be at the time of this release, namely, on April 13th, 1887?

A. My very strong impression is that he left it with Mr. Patterson.

The cross-examination of this witness is waived.

59 JOHN F. WILBER, sworn for the complainant, examined in chief by Mr. OFFUTT, testified as follows:

My name is John F. Wilber, and 38 years of age; an cashier of the Omaha savings bank; know the respondent, R. C. Patterson.

113 Q. Did the Omaha savings bank make a purchase of any notes signed and executed by the respondent, R. C. Patterson, and the complainant, Frank P. Dickson, to William W. Keysor and A. P. Tukey?

A. Yes, sir.

114 Q. What were the dates of those notes and amounts?

A. I brought the papers along with me; I can give the dates. I have not the notes; at least, I have one note of the series; that is all we have now.

115 Q. Dated June 10th, 1885?

A. Yes; three notes, one for $700.00 and two for eight hundred.

116 Q. When did the seven-hundred-dollar fall due?

A. That was the first note; a year from June 10th, 1885.

117 Q. Do you remember of ever having any conversation with the defendant Paterson with regard to releasing a lien upon any portion of the land which was mortgaged to secure the payments of these notes?

A. Yes; I remember that fact of our releasing or the application for the release.

118 Q. When was the application made with reference to the date the release was made—that is to say, how many days before the release was made did he apply to you for a release?

A. I could not say exactly; I would say it might be two weeks; anywhere from a week to two weeks.

119 Q. What was the date of the release?

A. I cannot give you that without referring to the memo-
60 randum I made at that time. (Witness refers to memorandum.) It was April 13th, 1887.

120 Q. How much of the land did he wish released by the bank?

A. My memorandum was simply in rough for the purpose of the clerk entering it on our mortgage record. I entered it or had it done according to that.

121 Q. I do not care for the particular part, but what I want to know was what portion of the tract?

A. A half, about.

122 Q. Was or was not any payment made to the bank by Mr. Patterson or any one for the purpose of obtaining this release? Was there any fee paid to the bank in order to secure this release?

A. I think most of my conversation was in regard to a five-dollar fee; we charged for making out the papers and looking up to see if we had a right to release.

123 Q. Who paid that five dollars?

A. Mr. Patterson.

124 Q. Who paid the note which fell due on June 10th, 1887, and when was it paid?

A. That is the second note; my recollection of that was a part of our stipulation of the release that that note should be paid, reduce the loan so much, and that it was paid at or about the time the release was made.

125 Q. Who paid it?

A. A Mr. Patterson.

126 Q. What date?

A. I suppose the same date that the release was made; my memorandum refers to the release.

127 Q. When was the interest payable upon the note which has not yet been paid?

A. A year from the date I stated; I think it was June 10th.

128 Q. When was the interest accuring on June 10th, 1887,
61 on the note last falling due paid?

A. I think it was paid on the day it was due, but I have an endorsement on the note which shows.

129 Q. Will you look it up and see?

A. It is about June 10th, 1887.

130 Q. Who paid it?

A. My recollection is that Mr. Patterson paid it.

181 Q. How did he paid it, in cash or by check?

A. My recollection is it was in a check.

132. Q. On what bank?

A. I could not say.

Cross-examined.

By Mr. WEBSTER:

133 Q. Are you sure that you received five dollars from Mr. Patterson, or may not the payment of that five dollars have been waived as a result of your conversation?

A. I would not say for sure without examining the record on that particular point. I know that we had a long talk and squabble about it, but, if I remember rightly, I insisted on it being paid. Mr. Wessells, of course, could have waived it if he saw fit, but the records will show the exact amount paid when this release was made.

134 Q. Testifying from your personal recollection, you cannot say whether it was paid or not?

A. I would not want to swear it was paid, but my recollection is it was.

Redirect examination.

By Mr. OFFUTT:

135 Q. After examining the records of the bank, could you refresh your recollection, so as to state positively whether Mr. Patterson did make a payment of a fee in order to have this release made?

A. Yes; the record would show the exact amount paid on that date.

62 136 Q. Will you examine and see and state with reference to that?

A. There was a charge made, but on account of Mr. Patterson furnishing the papers, getting the abstract, etc., that charge of $5.00 was waived.

OMAHA, NEBRASKA, *April 27th*, 1888.

The taking of testimony was continued pursuant to adjournment, the same parties appearing on either side.

FRANK P. DICKSON, the plaintiff, sworn in his own behalf, examined in chief by Mr. OFFULL, testified as follows:

I reside at Kansas City, Missouri; have lived there about 20 years; have been engaged in the coal business, and *an* still interested in that business; I know the defendant R. C. Patterson; have known him about four or five years; we married sisters a little over three years ago.

137 Q. Are you the same Dickson who is the plaintiff in this action?

A. Yes, sir.

138 Q. With reference to the matter in controversy, please state when the negotiations begun between yourself and the defendant Patterson with regard to your taking an interest in the land described in the pleadings.

A. In the month of May, 1885, I received a letter from Mr. Pat-

terson telling me of ten acres here; the negotiations began in *18* 1885.

139 Q. How were the negotiations conducted, in person or by correspondence?

A. By correspondence.

140 Q. Was any portion of the correspondence written by the defendant Patterson himself?

A. Yes; it was all written by him, the portion that I received.

63 141 Q. Do you know the defendant Patterson's handwriting?

A. Yes, sir.

142 Q. Have you that portion of the correspondence which was written by Mr. Patterson?

A. Yes, sir.

143 Q. I wish you would begin at the beginning and give in detail the origin of the negotiations between you gentlemen—that is to say, between yourself and Mr. Patterson; state what the negotiations were, how conducted, what, if any, interest you were to have in the land, what money you put in, if any, and in fact all about it. And, if you have any correspondence bearing upon it, will you produce it and identify it in such a way as to indicate what it is and by whom it was written and how it came into your possessions?

The defendant objects to any statement being made by this witness relating to these negotiations in so far as the same were carried on by correspondence for the reason that the letters themselves are the only evidence of what negotiations were, it being made to appear that the witness is in possession of the correspondence.

A. I received about May 19th a letter from Mr. Patterson informing me——

144 Q. I didn't ask you for the contents of the letter, but I asked you to produce and file such correspondence as you have in your possession.

A. On the 19th of May or thereabouts I received this letter, dated Omaha, Neb., May 19th, 1885, signed R. C. Patterson; I received it through the United States mail in the due course of business; in that letter he stated——

145 Q. What did you do after the receipt of that letter?

A. I wrote for further information in regard to the probable profits and costs of putting the addition on the market and the probable cost there would be to get some further informa-

64 in regard to the property.

146 Q. Di*f* you get *s*ny response from that?

A. Yes, sir.

147 Q. Will you produce and file it?

A. Here it is (witness produces letter).

The two letters last referred to are hereto attached, marked Exhibit 1. Filed with the deposition of Frank P. Dickson, April 27th,

1888. C. A. Potter, examiner in chancery; and Exhibit 2, with same endorsement as Exhibit one.

On the 22nd day of May I received a letter from Mr. Patterson giving me the desired information.

148 Q. What is the date of that letter?

A. Omaha, May 22nd, 1885, signed by R. C. Patterson, and it is in his handwriting.

149 Q. Will you produce and file that letter?

A. Yes, sir; the letter is hereto attached, marked Exhibit "2," filed with the deposition of Frank P. Dickson, April 27, 1888, C. A. Potter, examiner in chancery.

150 Q. Was anything said by you after the receipt of the letter dated May 22nd, 1885?

A. Yes; I think I sent him a postal card and notified him that *that* I would take a half interest in the property.

151 Q. After you sent that to him did you have any response from Mr. Patterson?

A. Yes; I received a letter in answer to that dated at Omaha, May 25th, 1885, signed by R. C. Patterson, in Patterson's handwriting.

152 Q. Will you produce that letter and file it as *and* belonging this deposition?

A. Yes, sir.

153 Q. Was anything done by you after the receipt of that letter of May 25th, 1885.

A. I authorized him to draw on me a sight draft for my
65 half and to send mortgages to me and my wife and I would sign them with him.

154 Q. Did you receive any response from that?

A. About May 30th I did.

155 Q. What was that response—any writing or words?

A. Yes; a draft was presented on me for $1,250.00.

156 Q. Have you that draft in your possession?

A. Yes, sir.

157 Q. Will you produce it and identify it by some proper note and make it a part of your deposition?

A. Yes, sir, and I herewith produce it marked.

158 Q. What is that date?

A. May 30th, and paid by me the first of June.

159 Q. Did you receive any response to your notification that he might draw on you; and, if so, have you that response in your possession?

A. Yes; he drew on me for a draft of $1,250.00.

160 Q. Was any letter written you about that time?

A. Yes; on May 29th, dated at Omaha, and signed by R. C. Patterson.

161 Q. Have you that letter in your possession?

A. Yes, sir.

162 Q. Will you produce that and make it a part of your deposition?

A. Yes, sir, and I here produce the letter and draft, and are marked respectively 4 and 5; filed April 27, 1888, with the deposition of Frank P. Dickson; C. A. Potter, examiner in chancery.

163 Q. In whose handwriting is that letter?

A. R. C. Patterson's.

164 Q. After the receipt of that letter was anything else done?

A. Yes; on the first of June I received the draft which was presented to me for payment and duly paid by me.

66 165 Q. After the payment of the draft was there or not any other correspondence between Mr. Patterson and yourself?

A. Yes; I received a letter dated Omaha, June 5th, 1885.

166 Q. Have you that letter in your possession?

A. Yes, sir; in which he acknowledged receipt.

167 Q. In whose handwriting is it and by whom signed?

A. R. C. Patterson, and is in R. C. Patterson's handwriting.

168 Q. Will you produce that letter and file it as a part of your *your* deposition?

A. Yes, sir; the letter is here produced, filed and marked Exhibit 6, filed April 27, 1888, with the deposition of Frank P. Dickson, C. A. Potter, examiner in chancery.

169 Q. After the receipt of the letter June 5th, 1885, signed by R. C. Patterson, state whether or not there was any communication between you and R. C. Patterson.

A. Yes; I received one of June 11th containing a proposed plat of the addition in the city of Omaha, which is attached to the letter of June 11th.

170 Q. Have you that letter in your possession and plat attached?

A. Yes, sir.

171 Q. Do you know in whose handwriting it is?

A. Yes; R. C. Patterson's handwriting, and signed by R. C. Patterson.

172 Q. Will you produce it and file it as a part of your deposition?

A. Yes, sir.

The letter is herewith filed and marked Exhibit 7. Filed April 27, 1888, with the deposition of Frank P. Dickson, *April 27, 1888.* C. A. Potter, examiner in chancery.

173 Q. Was there any other communication or correspondence between you after June 11th, 1885?

67 A. Yes, sir; a letter was received dated August 17th, signed by Patterson in Patterson's handwriting.

174 Q. Have you that letter in your possession?

A. Yes, sir.

175 Q. Will you produce and file that as a part of your deposition?

A. Yes, sir.

The letter is herewith filed and attached, marked Exhibit 9.

Filed April 27, 1888, with the deposition of Frank P. Dickson. C. A. Potter, examiner in chancery.

176 Q. After the receipt of the letter dated August 17th, 1885, was there or not any other correspondence between yourself and Patterson?

A. There was one previous to that, viz., of July 17th, 1885.

177 Q. Have you a letter of July 17th in your possession?

A. Yes, sir.

178 Q. In whose handwriting is it?

A. In the handwriting of R. C. Patterson and signed by R. C. Patterson.

179 Q. Will you produce and file that letter as a part of your deposition?

A. Yes, sir.

The letter is filed and attached, marked Exhibit 8. Filed April 27, 1888, with the deposition of Frank P. Dickson. C. A. Potter, examiner in chancery.

180 Q. Subsequent to the dates last named did you have any other correspondence or communication with the defendant?

A. I received a letter dated August 24th, 1885.

181 Q. Have you that letter of August 24th, 1885, in your possession?

A. Yes, sir.

182 Q. Do you know in whose handwriting it is? And, if so, state.

68 A. It is in R. C. Patterson's handwriting and signed by R. C. Patterson.

183 Q. Will you produce and file as a part of your deposition that letter?

A. Yes, sir.

The letter is produced, filed, and marked Exhibit 10. Filed April 27, 1888, with the deposition of Frank P. Dickson. C. A. Potter, examiner in chancery.

184 Q. Was there any correspondence or communication subsequent to the last-named letter?

A. There was one of August 26th.

185 Q. Have you the letter of August 26th in your possession?

A. Yes, sir.

186 Q. State whether or not you know whose handwriting that is.

A. That is in Patterson's handwriting and signed by R. C. Patterson.

187 Q. Will you produce that letter and make it a part of your deposition?

A. Yes, sir.

The letter is hereto attached, filed, and marked Exhibit 11. Filed April 27, 1888, with the deposition of Frank P. Dickson. C. A. Potter, examiner in chancery.

188 Q. Had you any correspondence or communication with him after August 26, 1885?

A. Yes; October 21st, I received a letter from him.

189 Q. What was the date?

A. Omaha, October 21st, 1885.

190 Q. Have you that letter in your possession?

A. Yes, sir.

191 Q. Do you know in whose handwriting it is?

A. Yes, sir.

192 Q. In whose?

A. In R. C. Patterson's handwriting.

193 Q. Will you produce and file that as a part of your
69 deposition?

A. Yes, sir.

The letter is hereto attached, filed, and marked Exhibit "12." Filed April 27, 1888, with the deposition of Frank P. Dickson. C. A. Potter, examiner in chancery.

194 Q. Prior to the date of the letter of October 21st, had you any information that the land referred to in the letter of that date had been sold by Mr. Patterson?

A. No; I had no notice that the lands was sold until the deed came down from Omaha to Kansas City for me to sign.

195 Q. Was there any other paper in the envelope which contained this letter of October 21st, 1885, except the letter itself?

A. Yes; there was a deed.

196 Q. For what and from whom?

A. To the ten acres of land which we had purchased together.

197 Q. Have you that paper in your possession?

A. The deed was signed by myself and wife and returned to Mr. Patterson.

198 Q. Did you or not read it before signing?

A. Yes, sir.

199 Q. Was the consideration for the transfer of the property stated in the deed at the time you signed it or not?

A. Yes, sir.

200 Q. If you remember, state what the consideration was.

A. Six thousand dollars.

201 Q. How long after the receiot of the letter was it before you signed the deed?

A. I think it was the same day, about, or the next day after the letter.

202 Q. Was your wife in Kansas City at the time that you received the letter of October 21st, enclosing the deed?

A. No; she was in Colorado.

70 203 Q. If you can, state how it was that the deed was returned to Mr. Patterson after its receipt and acknowledged by you *M*?

A. Through the due course of mail.

204 Q. Was there or not any other correspondence or communi-

cation between yourself and Mr. Patterson after the receipt of the letter October 21st, 1885?

A. Yes; the deed was made to one Otto Boehme.

205 Q. What other communication did you have with him after October 21st, 1885?

A. I received October 30th a letter dated Omaha, October 30th, 1885, in Mr. Patterson's handwriting and signed by Mr. Patterson.

206 Q. Have you that letter with you?

A. Yes, sir.

207 Q. Will you produce and file it as a part of your deposition?

A. Yes, sir.

The letter is herewith filed and hereto attached, marked Exhibit 12½. Filed with the deposition of Frank P. Dickson April 27, 1888. C. A. Potter, examiner in chancery.

208 Q. Referring to the letter of October 30th, 1885, just produced by you, I notice it has some marks in pencil upon it; state whether or not they were upon it when the letter was received by you.

A. No; they are my figures in lead pencil; but there was a draft of $1,500.00 received with that letter and an account of the land sold.

209 Q. Had you any other communication with Mr. Patterson after the date of the letter last named?

A. I had one November 5th from Mr. Patterson.

210 Q. It is in your possession?

A. Yes, sir.

211 Q. In whose handwriting?

71 A. In Mr. Patterson's handwriting.

212 Q. Will you produce and file it as a part of your deposition?

A. Yes, sir.

The letter is produced, filed, and marked Exhibit 13. Filed with the deposition of Frank P. Dickson April 27, 1888. C. A. Potter, examiner in chancery.

The plaintiff here formally offers in evidence the foregoing letters, viz:

One dated Omaha, Nebraska, May 19th, 1885, signed R. C. Patterson.

One dated Omaha, Nebraska, 5, 22, 1885, signed R. C. Patterson.

One dated Omaha, Nebraska, 5, 25, 1885, signed R. C. Patterson.

One dated Omaha, Nebraska, 5, 29, 1885, signed R. C. Patterson.

One dated Omaha, Nebraska, June 5th, 1885, signed R. C. Patterson.

One dated Omaha, Nebraska, June 11th, 1885, signed R. C. Patterson, together with a plat hereto attached and purporting to be enclosed in the letter and marked "Patterson & Dickson place."

One letter dated Omaha, Nebraska, July 17th, 1885, signed R. C. Patterson.

One letter dated Omaha, Nebraska, August 17th, 1885, signed R. C. Patterson.

One letter dated Omaha, Nebraska, August 24th, 1885, signed R. C. Patterson.

One letter dated Omaha, Nebraska, August 26th, 1885, signed R. C. Patterson.

One letter dated Omaha, Nebraska, October 21st, 1885, signed R. C. Patterson.

One letter dated Omaha, Nebraska, October 30th, 1885, signed R. C. Patterson, with postscript signed R. C. P.

One letter dated Omaha, Nebraska, November 5th, 1885, signed R. C. Patterson.

One draft dated Omaha, Nebraska, May 30, 1885, signed R. C. Patterson.

The letters and drafts above offered in evidence are hereto attached, marked —.

72 213 Q. With regard to the statement made in the letter of June 12th, 1885, "the warranty deed is now on record in the county clerk's office, and there will be a report of the transfer published to-morrow, which I will send you," state whether or not there was ever any such report sent to you by Mr. Patterson, showing the transfer from Tukey to Keysor to yourself and Patterson.

A. There was a paper sent to me, my recollection is, giving the transfer of real estate.

214 Q. What kind of a paper?

A. A daily paper—I think it was "The Bee;" I am not sure—showing wherein the deed had been recorded.

215 Q. State whether or not that gave the consideration.

A. I believe it did; I am not sure.

216 Q. Had you seen Mr. Patterson in person or had any conversation with him or communication in any way except in the letters that you have produced between the date of the purchase and the date the land was sold?

A. No, sir; I had not.

217 Q. Had you been in the city of Omaha from the date the land was purchased until the date the land was sold?

A. No, sir.

218 Q. Had you been in Omaha ever at any time before the purchase of this land, June 5th?

A. Yes; I have been here previous—the previous fall—that is, the fall of 1884; I think in the month of October—the latter part of the month.

219 Q. From that time—that is to say—in October, 1884—when was the next time?

A. It was in September or October; it was in fair time, anyway.

220 Q. When was the next time you were in Omaha?

A. I was not in Omaha for two years after that.

73 221 Q. Had you any personal conversation with Mr. Patterson between the time that you were here at the fair in 1884 and the day of this purchase?

A. He had been in Kansas City. He came down to Kansas City in November, 1885.

222 Q. That was after the purchase of the land?

A. Yes, sir.

223 Q. My question was, had you had any personal conversation between the time you were here in the fall of 1884 and the date of the purchase of the land, June 30th, 1885?

A. No, sir.

224 Q. Was that visit of Patterson in November, 1885, before or after the receipt of the letter dated November 5th, 1885, which you have heretofore filed?

A. It was after.

225 Q. Did you have any conversation with him in November, 1885, in regard to this transaction?

A. There was some conversation, perhaps, in regard to the percentage of the profit. I thought it was a genuine sale and did not know any different at that time. He claimed a larger percentage than I claimed. It was all in a friendly spirit at that time, I not knowing what had been done.

Here the further taking of depositions was adjourned until tomorrow morning at 9 o'clock on account of the lateness of the hour.

74 OMAHA, NEBRASKA, *April 28th*, 1888.

The taking of testimony was resumed pursuant to adjournment, the same parties appearing on either side.

The direct examination of FRANK P. DICKSON continued:

226 Q. What did you mean by the statement that he claimed a larger percentage than you claimed on the money?

A. On the money invested by us.

227 Q. Explain that in detail.

A. He claimed that there was a profit of $600.00 for each on $1,250.00 invested by each; I claimed it was only 5 % on the amount invested; he claimed it was 100 %.

228 Q. Then it is a difference in the per cent.; do you mean to say the difference in the per cent. was the contention by him that he had a greater interest in the property than you, or than your interests was equal, and that the per cent. of profit for each of you was more or less?

A. No; it did not refer to our interest in the property, but to the money invested and the per cent. of profit on the money invested; our interests were equal.

229 Q. How much money has Mr. Patterson paid to you on the alleged proceeds of the alleged sale to Boehme?

A. He paid me $1,500.00, I believe I testified to that, up to the last of October.

230 Q. Can you refer to the correspondence that was identified and filed by you on yesterday and indicated the letter in which Mr. Patterson made you the remittance for this $1,500.00 if it was made by letter?

A. Yes; it was about the last of October or the first of November.

231 Q. Please refer to the letter and call the attention of the examiner to it.

A. In the letter of October 30th there was a draft inclosed
75 for $1,500.00.

232 Q. Has he ever paid you the remainder of $224.18 spoken of in this letter as a balance due to you after the payment of $1,500.00?

A. Not all of it.

233 Q. What part, if any, has been paid?

A. He has paid $112.50.

Cross-examined by Mr. WEBSTER:

234 Q. The reason why the remainder of the $224.18 was not paid to you was by reason of some controversy between you and Mr. Patterson relative to some other financial deal, was it not, by which he claimed that you were somewhat indebted to him?

A. No; there was a portion of that $224.18 paid.

235 Q. The portion not paid I mean.

A. In the letter received by him asking for that amount he said that he would send it as soon as he received the money from Boehme; but later on he refused to pay it.

236 Q. Was that not by reason of some dispute arising between you and him over some other financial matters?

A. He at first said it was due me and he would pay it—that is, after this other difference had arisen.

237 Q. But still the fact was that there was the dispute which arose between you and Mr. Patterson over other financial matters which was eventually given as a reason for not paying the balance of this money?

A. At one time after this difference arose between us he agreed to pay it, and at another time afterwards he refused to pay it.

238 Q. There is still pending between you and him, is there, an unsettled business dispute about some matters not connected with this sale?

76 A. Yes, sir.

239 Q. And this letter of October 30th, remitting to you $1,500.00, was long after you had signed the deed?

A. About four or five days, perhaps. It might have been a week. It was only a short time.

240 Q. About how long after this was it that you received the $112.00, being a part of the $224.18 which was to be paid to you?

A. About a month afterwards; a little over a month.

241 Q. Why did you sign that deed which came down to you if the sale to Boehme was not satisfactory to you?

A. At that time I had a good deal of confidence in Mr. Patterson. I supposed it was a genuine sale.

242 Q. Therefore the price at that time was satisfactory to you?

Objected to as immaterial, irrelevant, and incompetent.

A. I considered that while I had confidence in Mr. Patterson, still I did not think that the profit was large enough.

243 Q. You made no complaint on that account?

A. Yes; I spoke about it. We had a conversation afterwards.

244 Q. I am speaking at the time you signed the deed.

A. I may have said something in my letter to Patterson, but I can't remember it just now.

245 Q. And if you made any complaint at that time about the pric- *price* it was done by letter?

A. Yes; at that time.

246 Q. And if you did not do it by letter, then you didn't make any complaint until after the deed had been executed and delivered by you to Mr. Patterson?

A. My recollection is I wrote at that time about the percentage of profits, claiming it was a small percentage, and Mr. Patterson claimed that it was a greater percentage than I did.

247 Q. You think you have written such a letter?

A. I did.

77 248 Q. At the time you sent the deed?

A. Afterwards.

249 Q. I am not asking you what you did after you sent the deed; I want it back to the time when you executed the deed; did you make any complaint?

A. I may have mentioned it in the letter at that time.

250 Q. You may have and may not; you do not know, do you?

A. My recollection is not clear whether I mentioned it in that letter or just afterwards, but I know I mentioned it in the letter.

251 Q. In any event, you signed the deed and returned it when the consideration named was $6,000.00, as you understood it?

A. Yes, sir.

252 Q. You did not expect to get but $6,000.00 out of the property?

A. That was just on Mr. Patterson's representation was all I expected to get at the time.

253 Q. Then, did you not refuse to sign that deed because you thought the purchase-money was not enough?

A. No. I supposed Mr. Patterson was acting in good faith.

254 —. When did you begin to believe that he was not acting in good faith?

A. In the following winter and next spring.

255 Q. The winter of 1885 and 1886?

A. In the latter part of the winter and fore part of the spring of 1886.

256 Q. By that you mean the winter of 1885 and 1886?

A. It was the last of the winter of 1885–1886 and the spring of 1886.

257 Q. That was within a few months after you had received this $1,500.00?

A. About five or six months.

78 258 Q. This is written October 30th?

A. It was the next February or March that I discovered it, 1886.

259 Q. That was when you first discovered what you now think was an unfair deal?

A. Which I now think and then afterwards I discovered was an unfair deal.

260 Q. This discovery was in February, 1886. When you made that discovery in February, 1886, did you come up to see Mr. Patterson about it?

A. I wrote to him about it; yes, sir.

261 Q. But didn't come up?

A. I didn't come up at that time.

262 Q. Was the complaint which you made when you made this discovery in 1886 by letter?

A. Yes, sir.

263 Q. Up to that time you had been in possession of the $1,500.00 about 6 months?

264 Q. About six months—five or six.

264 Q. And the $112.00 for how long?

A. About three or four months, probably.

265 Q. You still have that money?

A. No, sir.

266 Q. Or you use it in your business?

A. Yes, sir.

267 Q. I mean by that that you keep it; you did not give it back to Mr. Patterson?

A. No, sir.

Redirect examination.

By Mr. OFFUTT:

268 Q. Counsel for the defense asked you as to whether or not there is still pending an unsettled business dispute about
79 some matters not relating to this case. Is or not that matter pending in court? And if you answer that it is, state when, with regard to the taking of this deposition, and about what hour in the day, if you can, the matter went into court.

Objected to as not proper redirect examination and that counsel for the defendant has not inquired about any lawsuit nor as to the character or nature of the dispute.

Mr. OFFUTT: Counsel for the complainant does not desire to show either the character or nature of that suit, but their purpose is to show that this unsettled or alleged unsettled business suit was instituted on yesterday afternoon after this witness began the giving of his own testimony and after the introduction by him of the letters filed on yesterday.

A. There is an unsettled dispute, and service was had on me yesterday afternoon, the 27th of April, about 6 o'clock, by the sheriff of this county. The suit is in the district court of Douglas county.

269 Q. Was that service before or after you had filed the letters which are referred to by you as exhibits in this case and signed by Mr. Patterson?

A. It was after I had filed the letters in this case.

270 Q. Was or not the defendant Patterson present here during the taking of the deposition at the time that these letters were filed?

A. He was.

271 Q. Was he or not present at this examination of yourself at the time of the service of the process upon you in this suit on yesterday afternoon?

A. No; he had gone out.

272 Q. About how long had he left the room before this process was served upon you?

A. About 15 or 20 minutes.

80 273 Q. Did he or not in that time, 15 or 20 minutes, have time to go from this office to the court-house in order to have that suit filed?

A. I would judge that he would.

Recross-examination.

By Mr. WEBSTER:

274 Q. Do you mean that he would have time to go out and draft a petition for that, filed it, and issue process and get service upon you?

A. He could have had it prepared in advance.

275 Q. You believe it was prepared in advance, don't you?

A. Perhaps it was.

276 Q. So the petition evidently was prepared before he heard those letters presented in court, were they not?

A. I do not know whether they were or not; he might have gone out and had something to do with fixing it up.

277 Q. He didn't go out until about 15 minutes before the sheriff came in with the summons?

A. About 15 or 20 minutes.

278 Q. The facts is the subject-matter upon which that suit was brought was a subject-matter of dispute of long standing between you and Mr. Patterson—that is, running back over one or two years.

A. Yes, sir.

279 Q. It was not something which sprang into existence by the simple production of these letters; it has nothing to do with these letters?

A. It may have been that he wanted to persecute and worry me while I am here.

280 Q. The question of dispute involved in that suit does not relate to any matters contained in these letters which you pre-

81 sented here?

A. No, sir.

FRANK P. DICKSON.

J. T. BELL, sworn for the plaintiff, examined in chief by Mr. OFFUTT, testified as follows:

My name is John T. Bell; I reside at Omaha, Nebraska; my age is 46; have lived in Omaha this last time since 1875; my present occupation is real-estate business and has been since March, 1883.

281 Q. What is the nature of your business? You say you have been in the real-estate business.

A. Real-estate dealer in the city and suburban property.

282 Q. Were you or not during the years 1884 and 1885 and 1886 acquainted with the value of real estate in the city of Omaha and adjacent to the city of Omaha and Douglas county generally, especially that portion near the city limits?

A. Yes, sir.

283 Q. Do you know where the property is located at one time known as Patterson's & Dickson's place and since known as East Side addition to the city of Omaha, containing about ten acres of ground in section twenty, section fifteen, of Douglas county?

A. Yes, sir.

284 Q. How long have you known that property?

A. I have known it in a general way for a good many years; I have owned the property adjoining it since 1884.

285 Q. Do you own property adjoining it?

A. That is, in the immediate vicinity.

286 Q. Were you or not acquainted with the fair and reasonable market value of this property known now as East Side addition and containing 10 acres of ground, during the month of October, 1885—say from the 20th of October to the 25th of October, if at that time it had been divided and platted into lots and blocks similar to what it is now platted as East Side addition, with reference to the value of the said tract?

82

A. Yes, sir.

287 Q. From the 20th to the 25th of October, 1885; during the latter half of the month of October, 1885?

A. The prices of property all through was materially enhanced during the month of October in that vicinity. I would say from the 15th of October on it was worth about $1,000.00 an acre. That was in consequence of two railroad lines there—the Belt line and the Missouri Pacific railway, which affected the values there for quite a distance in that vicinity up and down the road.

288 Q. You say in the latter part of October there would have been some difference. State what, if anything, there was that affected the valuation about that time.

A. As I say, the Belt line and the Missouri Pacific were located in there about that time.

289 Q. Do you know—and, if so, please state—when it was that the location of the Belt line and the Missouri Pacific Railway line at the points you have referred to was known generally to the public in the city of Omaha and the property owners in this city?

A. I was interested as one of the owners of West Side addition with several others. We bought in the early part of October a tract of 28 acres of Mr. Taylor, for a portion of which we paid him $1,000.00. On the 24th of October we closed our deal with him—that is, made him a payment of the final money to start with. We gave him a little money—two or three hundred dollars, perhaps—to hold the property for us, and that about the first of October—the

location of the road was not generally known then—and on the 24th we paid him the balance due him. At that time it was known.

83 290 Q. About what date would you be able to state the location of this land became generally known?

A. I would say in a general way about the middle of the month, basing it upon this payment to Mr. Taylor and also to J. E. Riley. I bought some land of J. E. Riley at the same time that we bought on the first and made a small payment down and held it, and some ten days afterwards we closed with him. He knew it at that time and said he would not have sold it if he had known it; that is all I have to go by, these deals.

291 Q. Look at that paper shown you, purporting to be a map of Omaha and its environs, issued by J. M. Wolfe & Co., publishers of the city directory of Omaha for 1888, and state whether or not you are able to say as to whether or not such papers show correctly the general plan of the city of Omaha with regard to its streets and the location of the various divisions and subdivisions in the city.

A. This is a map we have used in our city some time. I suppose it is a later edition of the same map which was sent out as an advertising medium and we have reason to believe that it is approximately correct. It is on a small scale, of course.

292 Q. State as to whether or not that map shows the location of the additions.

A. We take it for granted that it is approximately correct in its location of the additions. It is a map that is in general use and is accepted as being substantially correct.

The plaintiff offers in evidence the paper shown to the witness, purporting to be a map of Omaha and its environs, issued by J. M. Wolfe and Company, publishers of the city directory of Omaha for 1888. A copy of the same is hereto attached, marked—

Exhibit 00015, Apr. 28, '88. Chas. A. Potter.

84 293 Q. I now show you this exhibit, No. —, and ask you to indicate an answer to the question, if you can, where this property known as East Side is located upon this map. Describe it in a general way, so that one not present here could turn to the map and find it, if you can.

A. It lies between the junction of the Belt Line and Missouri Pacific railway, directly east of the tract of ten acres or about ten acres platted as Patterson's subdivision, which is bounded on the north and west and south by a tract platted as West Side. It does not lie directly east of Patterson's subdivision. The southwest corner of East Side is very near the northwest corner of Patterson's subdivision.

294 Q. Is there or not any indication on the map as to where East Side is located, by name or otherwise?

A. Certainly. The plat is marked, the words East Side being printed on the tract.

295 Q. You spoke a few moments ago about being interested in West Side. When did you become interested in that?

A. In October, 1885.

296 Q. How does West Side addition compare as to value and how did it compare in 1885 at the time as to value with that portion of the land in West Side addition of which you have spoken as having paid $1,000.00 an acre for?

A. I would say perhaps it was better land, because it was all clear. The tract we paid $1,000.00 an acre for was bounded by a creek and several acres lost.

297 Q. Do you know the lay of the land known as East Side addition?

A. Yes, sir.

298 Q. State how it is.

A. It slopes to the west gradually. The east end is quite high and slopes gradually to the west.

85 299 Q. Are there any creeks or any other interferences?

A No; there are no creeks, but there is quite a high point at the east end that I would consider somewhat of a disadvantage; the west end of the tract is much better than the east end.

300 Q. Were you interested in any land in the immediate locality of East Side addition other than west side?

A. Yes; I own 12 acres there that is now merged into West Side track; I bought that, perhaps, in 1883, in November.

301 Q. State particularly what, if any, opportunities you had for knowing the value and current prices of land in the vicinity of East Side addition.

A. At that time, in 1883 and 1884 and a part of 1885, I was a member of the firm of Bell & Shriver, and we were the agents of 119 acres lying immediately west of this belonging to Mr. Hinebaugh; we sold it for the owner to him in 1883 and it was immediately platted and sold as care property; so, naturally, all through 1883, 1884, and 1885 I was out there frequently on this tract of land engaged in selling and showing it.

— Q. Who owned that tract of land known as Patterson's subdivision?

A. That was a part of the Hinebaugh tract of 119 acres.

302 Q. Who owned that as Patterson's subdivision and to the question relative to dates? State who owned it in the summer of 1885.

A. My understanding is that Mr. Hinebaugh sold that to R. C. Patterson, but I have no positive knowledge.

303 Q. Do you know what business the defendant R. C. Patterson was engaged in during the summer of 1885?

A. I think Mr. Patterson was engaged in the real-estate business here in the latter part of 1884; I am not positive as to dates, though.

304 Q. In what business in 1885?

86 A. From that on that is my understanding at any rate.

305 Q. Would you be able to state whether or not the defendant Patterson was acquainted with the values of real estate in the particular locality of East Side addition in the month of October, 1885?

A. Mr. Patterson has always done a very extensive real estate

business here since I first made his acquaintance. I suppose he would have a knowledge that way attaching from one engaged as largely as he was in the real-estate business; that is all I can say about it.

306 Q. Did the location of these railway lines that you have just spoken of and accompanying that they were to be located at the particular points named have any effect on real estate value upon this property in East Side addition?

A. Yes; certainly.

307 Q. What effect?

A. It enhanced the values all around there for quite a distance.

308 Q. Would you be able to state to what extent it enhanced values in that locality?

A. I would say it doubled value-.

309 Q. Was there any other improvemamt projected or located in that neighborhood other than the building of the lines of railway in the fall of 1885?

A. It was generally understood that a tract of ground which S. H. H. Clark purchased of 20 acres was to be used for shops, and I have an idea that that was the scheme of the Missouri Pacific at that time. We purchased the land from Mr. Clark and we were led to believe that the purchase was being made for that purpose.

310 Q. Do you know anything about a depot?

A. There was a depot, of course, on the other side of the creek from this East Side tract.

87 311 Q. State where that depot was located, with regard to East Side addition, and what the name of the depot was, if it had any name, if you know.

A. It is called West Side station, and is perhaps 400 yards west of the west line of East Side.

312 Q. When was that depot located there? I do not ask when it was completed, but when was it generally known in this community that the depot was to be erected there?

A. It would be that fall some times. I could not say just when, October or November; perhaps the fore part of November.

Cross-examined.

By Mr. WEBSTER:

313 Q. How much did you pay for the ground that you bought from Mr. Hurlbut?

A. I think $400.00. I know that was the price—$8,000.00 for 20 acres.

Objected to as irrelevant and incompetent.

314 Q. This land you say that you paid $400.00 an acre for was bought by you for the railway company, was it?

A. Yes, sir.

315 Q. And that land you bought at $400.00 an acre lies adjoining Patterson's subdivision, does not it?

A. Just west of Patterson'- subdivision.

316 Q. And adjoining it?

A. Adjoining it on the west.

317 Q. And that is the ground where the depot is located, is it not?

A. No, sir.

318 Q. Is not it right adjoining the depot?

A. No; the depot is north of that. I do not know how far.

319 Q. That is as near the depot as East Side, is it not?

88 A. Yes, sir.

320 Q. And that land was just as good as East Side, was it not; worth just as much in the market?

The WITNESS: You mean in the fall of 1885?

321. Mr. WEBSTER: Yes, sir.

The WITNESS: Hardly as much.

322 Q. I meant in October or November, 1885.

A. After the railroad was located there it was worth just as much as Patterson's tract.

323 Q. How much was it worth in the month of October, 1885; was not it worth as much then as Patterson's?

A. Yes, sir.

324 Q. Will you tell me how far it is from this land to East Side, the Hurlbut tract?

A. Probably an eighth of a mile; about half way across a forty, I would say.

325 Q. At that time out in that locality it was all country, was it not, practically?

A. Hinebaugh's tract had been platted in 1883, and a good deal of it had been sold as acre lots in 1883.

326 Q. It was all country so far as near town was concerned?

A. Yes, sir.

327 Q. No town out there, no houses out there, and it was about how far from Omaha property?

A. I think it was about three miles from the center.

328 Q. I want you to mark the Hurlbut property on this map by some mark by which it may be designated and tell the reporter what the mark is that you put on this property that was sold for $400.00 an acre right adjoining this land that you talk about being worth a thousand dollars an acre.

A. I marked it with a circle, with a pencil. (Witness marks the tract.)

89 Redirect examination.

By Mr. OFFUTT:

329 Q. What was, in your opinion, the fair market value of the land known as the Hirlbut land from the 15th to the 20th of October, 1885.

A. It was worth a thousand dollars an acre in consequence of the location of the railroad. The railroad was located after the purchase was made from Mr. Hurlbut.

GEORGE M. HICKS, sworn for the plaintiff, examined in chief by Mr. OFFUTT, testified as follows:

My age is 31; reside in Omaha, Nebraska; have resided here since 1878; am in the real-estate business.

330 Q. Have you or not had any experience either in purchasing or selling property in the city of Omaha and property suburban to the city of Omaha?

A. I have.

331 Q. During what time has that experience — in both purchasing and selling land?

A. Since 1880.

332 Q. Do you know the defendant, R. C. Patterson?

A. Yes, sir.

333 Q. How long have you known him?

A. Perhaps a couple of years.

334 Q. Do you know the location of the property known as East Side addition on the present map of the city of Omaha and formerly known as Patterson & Dickson's place?

A. Yes, sir.

335 Q. How long have you known that location of that property?

A. I have known of the property since the winter of 1885.

336 Q. Were you or not during the summer of 1885 and
90 fall and winter of 1885 and 1886 acquainted with the then current value of real estate in this locality? I mean in the locality of East Side addition itself.

A. Yes; to some ectent.

337 Q. What, if any, observation had you of East Side addition—I mean the ten acres of ground now known as East Side addition.

A. The first occasion I had to know that intimately was, I think, in February, 1886.

338 Q. State whether or not you know how the ground was situated—the plat and its general appearance, etc.?

A. I do not remember anything about how the land was situated. I know it was a very choice ten-acre piece. It lies very nicely; that is all.

339 Q. What, in your opinion, according to the then current prices, was the fair market value of this ten-acre piece of ground known now as East Side addition, from the 15th to the 30th of October 1885, on the supposition that it had then been made out into lots numbering, say, from one to fifty, fronting fifty feet and running back each of them 132 feet, in October, 1885?

A. In October, 1885, I was not in the real-estate business. I don't know how lots would have sold out there. I would judge more of the value by the acre.

340 Q. Disregarding the fact that it had been platted, are you able to say from your then knowledge of real-estate values and the real-estate market in October, 1885, what it was worth as acre property in the market?

A. In my judgment I would have considered the property was worth from 800.00 to one thousand dollars an acre.

341 Q. Do you know whether or not the location of the belt line railway and the Missouri Pacific branch in that locality, together with the depot known as East Side, had any effect upon real-estate values in that locality?

91 A. Yes; I know that it did.

342 Q. Can you state—and, if so, please do so—the effect of locations of the railroadss and depots upon the values of real estate at that point?

A. My opinion -s that it aided largely in the selling of the lots. It gave a ready sale to the property.

343 Q. Do you know when it became known currently that the road was to be constructed—these particular lines, with reference to East Side addition?

A. No; I could not swear about that. I might have a general idea, but not enough to state definitely.

344 Q. With regard ti property in this locality, state whether or not you have had any transaction either in the purchase or sale of property there.

A. I bargained to buy five acres.

345 Q. I didn't ask you to state the transaction, but as to whether or not you had any transactions in the year 1885.

A. I had in the early part of 1886, but not in 1885.

346 Q. About how early in 1886?

A. I think it was in February. The snow was very deed on the ground at that time.

347 Q. Where was the land that you were making negotiations for with reference to East Side addition, and what was its value with reference to East Side addition?

A. It was a piece of land now known as Hartford place.

348 Q. Where did Hardford place lay, with regard to East Side?

A. I was a narrow strip of land about three or four hundred feet south of the present East Side addition.

349 Q. What was the size of Hardford place?

A. Five acres.

92 350 Q. Which was the more valuable per acre? And state the reason, if you know any.

A. I would consider East Side worth more than Hardford place; it lies nearer Leavenworth street and lies better; a little.

351 Q. Is there any other reason in regard to facilities for platting by reason of its size or otherwise?

A. Yes; East Side would plat much better, because Hardford place was too narrow to plat to good advantage.

352 Q. Did you make any negotiation relative to the purchase of land in this vicinity at the time spoken of or about that time? And, if so, state what they were.

A. I bargained to buy this five acres but gave it up aferwards on account of the land lying different that I at first supposed.

353 Q. State at what price you had bargained to buy it, and the exact reason why it was not closed.

Objected to as not proper and another piece of land; not the one in suit.

A. I offered $900.00 an acre, and the reason I did not buy it was that it was represented to me first as being almost square, or, perhaps, twice as long as wide, but when I came to look over the papers I found it about four times as long as wide, which made it a very narrow strip. I thought I could not plat it to good advantage, so I gave it up.

— Q. Do you know whether or not Mr. R. C. Patterson was acquainted with real-estate values at that time?

A. No; I could not say.

354 Q. Do you know whether or not he was engaged in the real-estate business at that time?

A. My impression is that he was, but I am not positive.

93 355 Q. Do you know whether he owned any other property in that locality than East Side addition?

A. No; I could not say.

356 Q. Who owned Patterson's subdivision, or do you know, in 1885?

A. At the time I first noticed this land particularly, I understood that Mr. Patterson owned it; that is the only land that I knew that he owned out that way in 1885.

Cross-examined.

By Mr. WEBSTER:

357 Q. In 1885 you were a railroad clerk?

A. Yes, sir.

358 Q. And went into the real-estate business when you heard of this real-estate boom in about 1886?

A. No; I commenced buying real estate in 1880, I think.

359 Q. When did you go into the real estate as a business?

A. About May, 1886.

360 Q. You were one of the persons, like hundreds of others, that went around town and opened real-estate offices in 1886 and 1887, what you called the Omaha boom?

A. Yes, sir.

361 Q. You real-estate men are the men that boomed it, did you not?

A. I never knew that we had a boom here.

362 Q. Do you mean to say under oath that you and the real-estate men did not know that we had a boom here?

A. I don't think we ever had a boom.

363 Q. You have not got it out of your head that we have had a boom?

A. I have not discovered any.

364 Q. Don't you know that the boom that you real-estate men put on real estate outside has entirely flattened out and become a thing of the past.

A. No; I do not think it has.

94 365 Q. Don't you know that four out of five out of the real-estate offices in this town have closed up and been turned into confectionary and clothing stores and things of that kind?

Objected to as immaterial and incompetent.

A. I know that there is a great many that have gone out of business.

366 Q. It is because there are no sales for real estate; is not that the reason; the prices have gone down; there are no buyers?

A. No; that is not the reason.

367 Q. What is your idea of why they went out of business?

A. A great many went in without means, and the fact that real estate did not keep as active as when they went in they were forced to shut up shop.

368 Q. The business would not keep them?

A. No, sir.

369 Q. They have been shutting up shops pretty rapidly for the last six months.

A. I think the first of this last year they went out almost as rapidly — in the fore part of the year 1887.

370 Q. They are going out now from week to week?

A. They are coming in now about as fast as they are going out. I find new ones starting every little while.

371 Q. Will you tell me any man that has just gone into the real-estate business in the last three months?

A. I have got cards on my desk of three or four different ones; two or three in the Paxton building; men that I was not acquainted with.

372 Q. That is the extent of your knowledge; don't you know of a good many more than have gone out?

A. Yes; there is a good many went out.

373 Q. Don't you know that the sales of real estate are comparatively nothing with what they were in the latter part of 1887; don't you know that the real estate that you have been talking about is not worth one-half what it was in 1886?

95

A. No; I do not know that.

374 Q. In 1885 you were not in the real-estate business at all, were you?

A. No, sir.

375 Q. You didn't have any office?

A. No, sir.

376 Q. You were a clerk in the railroad office?

A. Yes, sir.

377 Q. So in October, 1885, you do not know what this land out here was worth, do you?

A. I have a general idea.

378 Q. Would not men engaged in the real-estate business like Byron Reed and O. F. Davis & Co. be more apt to know than you?

A. I would say that they were better able to give an opinion.

379 Q. And C. E. Mayne?

A. No; he had not been in long enough to have any better judgment than I had.

380 Q. Don't you know that C. E. Mayne sold a thousand lots to where you sold one?

A. He did not at that time because I had been dealing in real estate longer than he had.

381 Q. Was not C. E. Mayne in this real-estate business in 1883—two years before you were?

A. I do not know that.

382 Q. You do not know but he had been in the real-estate business two or three years. If you do not, why do you say that he didn't know any more than you?

A. He was not known as a real-estate agent until 1885 or 1886. I do not remember of his being in business before that.

96 383 Q. This particular piece that you speak about in 1886, don't you know that it was sold to Mr. Swetman for $700.00 an acre?

A. I understood it was.

384 Q. $700.00 in 1886. Don't you know it was worth more in 1886 than 1885 on the market?

Mr. OFFUIT: What time in 1886 and what time in 1885?

The plaintiff objects to the testimony as not specific.

A. I know this: that real estate was advancing through the fall and winter of 1885.

Mr. WEBSTER:

385 Q. It was worth more in 1886 than in the summer and fall of 1885?

A. Yes, sir.

386 Q. Then, if it sold for $700.00 in the summer of 1886, it was worth less money in 1885, was not it?

Objected to on the ground that there is no evidence to show that there was any sale made in the summer of 1886 or any time approximate thereto.

A. It didn't sell for $700.00 in the summer of 1886.

387 Q. After being instructed by the question of the counsel on the other side, will you state when it did sell for $700.00 in 1886?

A. Some time near March; the early part or the latter part of February.

388 Q. Was not it worth more in February or March, 1886, than in 1885, according to the price of this Hardford place?

A. I would say perhaps it was.

389 Q. Then it was worth $700.00 *or* February or March, 1886; it was worth less in 1885?

A. Yes, sir.

97 W. G. SHRIVER, sworn for the plaintiff, examined in chief by Mr. OFFUTT, testified as follows:

I am engaged in the real-estate business; preside at 25th and Parker streets, in the city of Omaha; have been engaged in that business in Omaha since the spring of 1881; was not engaged in

that business for myself until the fall of 1882; the first year and a half I clerked for Mr. Bemis.

390 Q. During that time in what class of property have you dealt?

A. Our business has been general.

391 Q. Do you know the location of a piece of property containing about ten acres, known as East Side addition?

A. Yes, sir.

392 Q. How long have you known that property?

A. I have known it personally since 1882.

393 Q. Do you know what was the value of that property and the property in that locality during the fall of 1885?

A. I think I do; yes, sir.

394 Q. State what, in your opinion, was the fair market value, the current value, of that ten acres of land about the middle of October, 1885.

A. I think it was worth $800.00 an acre.

395 Q. Do you know whether or not the location of the Belt Line railway had any effect upon values in that locality?

A. Yes, sir.

396 Q. What effect did it have?

A. It enhanced the value of property considerably there; there was more ready sale after it was located and about the time it was being located than before.

397 Q. Can you give an estimate as to the per cent. of increase by reason of that?

98 A. It was a considerable; it enhanced right along after that; it was worth a great deal more shortly afterwards than it was before.

398 Q. Did you have any dealing in property in that locality?

A. Yes, sir.

399 Q. In what property during that time of 1885?

A. I had some dealings with five acres joining on the south, and also Hinebaugh and McShane's property on the south of it, and in fact all around except on the east.

400 Q. To what extent were your dealings?

A. General dealing, and I had the agency of McShane's and Hinebaugh's property, and we sold all of Hinebaugh's, with two or three exceptions, and a considerable of McShane's; that was in the spring and summer of 1883, 1884, and along there.

401 Q. Of the real-estate men in Omaha, what men do the largest dealings and had the largest transfers of real estate in the summer of 1885 in the locality of East Side addition?

A. There were several that done considerable, or, at least, I understood so; Bell & McCandlish, Mayne, and I think Patterson was doing a good deal of business at that time.

402 Q. This defendant?

A. Yes; at least that was my impression that he was selling some out there; at least he told me so; to what extent I do not know.

403 Q. What Bell is that?

A. John T. Bell, of Bell and McCandlish now.

404 Q. Was any one in partnership with Mr. Bell at that time?
A. I think so.
405 Q. Who was it, Mr. McCandlish?
A. I am not sure about that; I have forgotten whether they were in partnership in 1885 or not or in 1886.
99 406 Q. State whether or not the plat laying this property off into lots, such as east side was layed off in, had any effect upon its value—that is to say, whether it would be more valuable in that shape.
A. I do not know; it usually sells for more per lot, but for platting purposes I suppose it would be worth a little more than it was before it was platted.

Cross-examined.

By Mr. WEBSTER:

407 Q. That is, when you take small payments down?
A. Yes, sir.
408 Q. So the reason it was worth more was because you sell it in smaller quantities and take small sums in payment and longer time?
A. Yes, sir.

The plaintiff offers in evidence the plat of East Side addition, with the dedication thereof acknowledged by R. C. Patterson, April 14th, 1886 The same is hereto attached, marked—
Exhibit 00016, Apr. 28, '88. Chas. A. Potter.
The plaintiff offers in evidence an official copy of the deed from Alonzo P. Tukey and others to R. C. Patterson and others, of date June 9th, 1885. The same is hereto attached, marked—
Exhibit 00017, Apr. 28. '88. Chas. A. Potter.
The plaintiff offers in evidence an official copy of a deed from R. C. Patterson and others to A. P. Tukey and others, dated June 10th, 1885. The same is hereto attached, marked—
Exhibit 00018, April 28, '88. Chas. A. Potter.
100 The plaintiff offers in evidence an official copy of the dedication of Patterson & Dickson's place, together with the copy of the plat of Patterson & Dickson's place, of date July 17th, 1885. The same is hereto attached, marked—
Exhibit 00019, Apr. 28, '88. Chas. A. Potter.
The plaintiff offers in evidence an official copy of the deed from R. C. Patterson and others to Otto Boehme, purporting to have been acknowledged before Alfred Millard by Patterson and wife on the 28th day of October, 1885, in Douglas county, Nebraska, and by Frank P. Dickson on the 23rd day of October, 1885, in Kansas City, Missouri, and by Mary A. Dickson on the 27th day of October, 1885, in the county of El Paso, State of Colorado, and purporting to have — entered for record October 29th, 1885, at 10 o'clock a. m. The same is hereto attached, marked—
Exhibit 00020, Apr. 28, '88. Chas. A. Potter.
The plaintiff offers in evidence an official copy of the deed from

Otto Boehme to R. C. Patterson, purporting to have been acknowledged before Luther Drake, in Douglas county, Neb., October 29th, 1885. The same is hereto attached, marked—

Exhibit 00021, Apr. 28, '88. Chas. A. Potter.

The plaintiff offers in evidence an official copy of the paper vacating the plat of Patterson & Dickson's place, of date February 23rd, 1886. The same is hereto attached, marked—

Exhibit 00022, Apr. 28, '88. Chas. A. Potter.

101 The plaintiff offers in evidence an official copy of the deed from R. C. Patterson and Jacob Fawcett, purporting to have been acknowledged by said Patterson and wife on the 21st of April, 1887. The same is hereto attached, marked—

Exhibit 00023, Apr. 28, '88. Chas. A. Potter.

The plaintiff offers in evidence an official copy of a deed from R. C. Patterson and wife to William Peppin, purporting to have been acknowledged by R. C. Patterson and wife on the 13th day of May, A. D. 1887, the same is hereto attached, marked—

Exhibit 00024, Apr. 28, '88. Chas. A. Potter.

The plaintiff offers in ebidence an official copy of a deed from R. C. Patterson to Eugene Montgomery, purporting to have been acknowledged by Patterson and wife on the 13th day of May, 1887. The same is hereto attached, marked—

Exhibit 00025, Apr. 28, '88. Chas. A. Potter.

The plaintiff offers in evidence an official copy of a deed from R. C. Patterson and wife to August J. Millhouse and others, purporting to have been acknowledged by Patterson and wife on the 19th day of May, 1887. The same is hereto attached, marked—

Exhibit 00026, Apr. 28, '88. Chas. A. Potter.

T. A. MEGEATH, sworn for the plaintiff, examined in chief by Mr. OFFUTT, testified as follows:

My name is T. A. Megeath; I reside in Douglas county, Nebraska; am register of deeds of Douglas county, Nebras., and have occupied that position since the 5th of January last; am the custodian
102 of all the deeds and transfers of real estate in Douglas county. The records are in my charge.

409 Q. Have you or not made an examination of the records of your office to ascertain what transfers since June 9th, 1885, have been made in reference to the north half of the south half of the southwest quarter of the southwest quarter of section 20, township 15, and range 13 east, being ten acres of land?

A. I have.

410 Q. State whether or not since the 8th day of June, 1885, there have been any conveyance or transfers of any of this real estate lodged in your office other than this mentioned in the exhibits which I herewith hand you numbered from—

Exhibit 00017, Apr. 28, '88, Chas. A. Potter, to Exhibit 00026, Apr. 28, '88, Chas. A. Potter.

A. I have examined them and there is none that I know of.

411 Q. You say there is none that you know of. I wish you to examine the records and state positively.

A. So far as I have examined the records. I have examined them up to date and find none.

412 Q. Do you know a gentleman named Otto Boehme?

A. I am not personally acquainted with him, I know of him.

413 Q. Do you know him when you see him?

A. No; I do not know as I should. I may know the man and not know him by name.

414 Q. Have you examined the records in your office for the purpose of ascertaining whether or not he ever at any time in the last 10 years held the title to any real estate in this country?

A. I have.

415 Q. State what was the result of that investigation.

Objected to as immaterial.

A. I find that this land in question had been deeded to him
103 *him* on the 29th day of some month and the next day was deeded back.

416 Q. Was there any other conveyance to or from him of record in your office?

A. No; no other conveyance.

Cross-examined.

By Mr. WEBSTER:

417 Q. Did you look over that list of papers which you had in your hands, which you say is all the conveyances shown by the record?

A. I understood the question to be the certified copies that I furnished.

418 Q. Did you furnish a certified copy of the deed from Patterson to Martin?

A. The deed from Patterson to Martin is upon record.

The plaintiff offers in evidence the record of the deed from Patterson to Martin. A copy of the deed is hereto attached marked Exhibit 00027, Apr. 28, '88. Chas. A. Potter.

419 Q. This is one of the*y* conveyances?

A. Yes; I simply understood the question that it was the certified copies that I furnished.

420 Q. You answered the question then that the deed from Patterson to Martin was included in this list?

A. Yes, sir.

421 Q. And the*re* are not excepting that?

A. No, sir.

The further taking of testimony is adjourned until next May 11th, by agreement, at 2 o'clock p. m.

104 OMAHA, NEBRASKA, *May 11th*, 1888.

The taking of testimony was resumed pursuant to adjournment, the same parties appearing on either side.

GEORGE W. AMES, sworn for the plaintiff, examined in chief by Mr. OFFUTT, testified as follows:

My occupation is real-estate business; have been engaged in that business three years; am 33 years of age; I reside in Omaha and have been engaged in the real-estate business in that place.

422 Q. Were you or not during the year 1885 acquainted with the values of real estate in the city of Omaha and adjacent to it?

A. I was.

423 Q. Do you know the location of the property, and have you ever seen the property, known as East Side addition?

A. I have.

424 Q. Did you or not know what its fair, reasonable value was in the month of October, 1885?

A. Yes, sir.

425 Q. What, in your opinion, was the value of the property known as East Side addition per acre during the latter half of the month of October—say from the 15th to the last of October, 1885?

A. About $1,000.00 an acre.

426 Q. Had you dealt to any extent in real estate in that section?

A. Yes; in all sections.

427 Q. Do you know the defendant R. C. Patterson?

A. Yes, sir.

428 Q. Did you know him during 1885?

A. Yes, sir.

429 Q. Do you know whether or not he was acquainted with the real-estate market and value in this city and suburbs during the year 1885?

105 A. I would say that he was. That is my opinion.

430 Q. Do you know whether or not he dealt in real estate in the locality of East Side addition other than this place known as East Side addition?

A. Yes, sir.

431 Q. To what extent?

A. Some considerable extent, as I remember.

432 Q. About what time were his operations?

A. Along about three years ago or more—three to four years ago.

433 Q. Do you know whether or not the fact that the Missouri Pacific and Belt Line depots were located at the point that they now are with regard to this property had any effect upon the values of real estate in the locality of East Side addition?

A. It did; yes, sir.

434 Q. What effect did it have?

A. It strengthened values—increased values largely.

435 Q. Can you give an estimate as to what per cent. of increase the location had upon values in that section, whether or not it was rapid or the contrary?

A. It was very rapid. My recollection is that the values—I would say 100 % or more increase. I do not recollect particular instances. I have only a general recollection.

436 Q. To what extent were you dealing in real estate during the year 1885 and 1886.

A. Very largely.

437 Q. Were you dealing in this locality in real estate?

A. Yes; more or less, since we have been here.

Cross-examined by Mr. WEBSTER:

438 Q. Do you not know of property in the locality which you have made mention of which at about the dates you have made
106 mention of sold at the rate of $400.00 an acre at about that time?

A. I think there were lands that sold prior to this location being known.

439 Q. Is it not true that lands were bought there for the use of the railway which lay right across its right of way at the rate of $400.00 an acre?

A. My recollection is that there was a piece bought there at about $600.00 an acre, I think, of the railway company.

440 Q. Was you at that time connected with Mr. Bell in business?

A. No, sir.

441 Q. Do you know of a piece bought there at that time by Mr. Bell for $600.00 an acre?

A. That is the piece I have reference to.

442 Q. That was after it was known that the railway company was to be located?

A. I think not; I think it was not known what he had bought that for until afterwards.

443 Q. Was not that purchase made in the month of October?

A. I think it was, but I do not think it was generally known; the raise in value was after people knew that that railroad was going there.

444 Q. *Do* in the month of October lands did sell there at the rate of about $600.00 an acre?

A. I think it did.

445 Q. This thousand dollars' value was after that time?

A. I would say during the month, as I recollect it. It was during this month that this location was made there the excite-ent began, and I attributed the excitement to the fact of that location.

446 Q. Isn't it a fact that this purchase of $600.00 an acre was in that locality and purchased in the latter part of October?

A. I do not remember that.

107 447 Q. Without reference to the dates of the location this rise in value was not until a date later when the property was sold for $600.00 an acre?

A. It was as soon as it became known or partly known that that railroad was going to locate there. Then values immediately rose.

448 Q. State whether or not it was after the date when this other piece of property sold for $600.00 an acre.

A. The only way I can get at it is to say when this purchase was made at $600.00 it was not known that the railroad would locate

there, but subsequently it was known that the railroad company would locate their line there.

449 Q. At that date it was not known that the railway was to be constructed at that point?

A. It was surmised.

450 Q. Up to that date there was no enhancement of values on account of the Missouri Pacific railway?

A. I am inclined to think that there was a slow increase in value, and as soon as it became definitely known there was a large increase.

451 Q. I want to know the date of this rise; I am not disputing about the fact of the rise. What I want to know is whether or not this sale at $600.00 an acre was before it was generally known that the railway was to be constructed there, and whether or not it was not before this rise in property that you have made mention of.

A. I am inclined to think so; yes, sir.

Redirect examination.

By Mr. OFFUTT:

452 Q. This purchase at $600.00 an acre or about that sum was made by whom?

A. My recollection is that Mr. Bell made it, if I remember, for S. H. H. Clark.

108 453 Q. What Bell?

A. John T. Bell.

454 Q. Is that the same John T. Bell that is engaged in the real-estate business in the city of Omaha?

A. Yes, sir.

455 Q. To refresh your recollection, I wish you would think again and see if it was not in the month of September that that purchase was made in the year 1885.

A. Unless I had some date to refresh my memory I could not state positive, but it was about the first part of the fall.

456 Q. It was shortly after this purchase that it became known that the railroad was to be there—shortly after this purchase of Mr. Bell's?

A. Shortly after this purchase it became noised about that that road had bought that, and naturally the land went up.

457 Q. Who was the purchaser from Mr. Bell from?

A. Mr. Taylor. He has gone out West and still owns a piece there.

HARRY D. REED, sworn for the plaintiff, examined in chief by Mr. OFFUTT, testified as follows:

I reside in Omaha, Nebraska, and have lived here 11 years; am 27 years of age, and in the real-estate business; have been engaged in the real-estate business 11 years, a part of the time as clerk in the real-estate office.

458 Q. During the time that you have been so engaged state

whether or not you had any experience in the sale of real estate in the city of Omaha and suburban property?

A. Yes; I have had considerable dealing in real estate.

459 Q. Were you or not during the year 1885 acquainted with the values of real estate in the city of Omaha and property adjacent thereto?

109 A. I was.

460 Q. Do you know or did you know in the year 1885 the property known on the map of the city of Omaha as East Side addition?

A. Yes; I was well acquainted with it.

461 Q. What opportunities had you and what reason had you for being well acquainted with it?

A. At that time, during the year 1885, I and another party were negotiating for the purchase of 20 acres adjoining it on the north.

462 Q. What, in your opinion, about the 20th or 21st of October, 1885, was the value of the property known as East Side addition?

A. I would say about $1,000.00 an acre.

463 Q. Do you know whether or not the location of the depot known as West Side depot on the Missouri Pacific and Belt line had any effect upon real estate values in this locality?

A. Yes; it helped real estate values. It increased them.

464 Q. Do you know R. C. Patterson, the defendant?

A. Yes, sir.

465 Q. Do you know whether or not he was acquainted with real-estate values in this county?

A. He was dealing in real estate at that time and I supposed he was well acquainted with the values.

466 Q. In what localities were his dealings principally directed, if they were directed in any particular locality?

A. Mr. Patterson owned East Side addition and also property in West Side addition; probably 30 or 40 acres in all that he had had handled at different times.

467 Q. You know a young man by the name of Otto Boehme?

A. Yes, sir.

468 Q. Do you know whether or not he was in the employ of Patterson or in or about Patterson's office, assisting in the sale

110 of real estate or otherwise engaged, during the year 1885?

A. I could not say as to during the year 1885.

469 Q. Could you say with regard to an answer to that question as to any time?

A. During the year 1886 I saw Mr. Boehme several times around Mr. Patterson's office, and I supposed he was in his employ.

470 Q. What was Mr. Boehme doing during that time that you knew him?

A. I do not know that he done anything except in connection with the real-estate business. I have known him seven or eight years.

471 Q. Was there or not and is there now any name applied with regard to that particular kind of real-estate business that he was in?

A. I do not understand the question.

472 Q. What kind of a real-estate business was *he* known as?

A. I suppose he would be known as a curbstone man.

473 Q. What do you mean by that?

A. I do not think he was in business for himself. I do not know of his having had an office of his own.

474 Q. How long was he in and about Mr. Patterson's office, if you know?

A. All I can say positive was during the year 1886 and early part of the summer.

Cross-examined by Mr. WEBSTER:

475 Q. You mean that Mr. Boehme did not have an office and your had—he speculated without an office?

A. I do not know as I mean that.

476 Q. Why do you call him a curbstone real-estate man?

A. Mr. Boehme, as I have known, has been around town for a great many years, and supposed he was dabbling in real estate a little. I know that during the years of 1883, 1884, and 1885
111 he had charge of the little property on 15th street which belonged to relatives of his, and he had no office that I know of.

477 Q. That means that he did not have an office?

A. I do not think he had during those years.

478 Q. That was the difference between Mr. Boehme and other people who did have an office. He did his business without an office and some of the rest of you had an office?

A. Yes. Before the year 1886 I am speaking about.

479 Q. In the year 1886 he did not have an office, did he?

A. In 1886 I used to see him about Patterson's office.

480 Q. So that he had been a real-estate man, though, from 1882 or 1883 to a greater or less extent?

A. He had charge of the little property that I knew of on 13th street. I do not know of his doing anything else.

481 Q. Any other business than real estate?

A. You can call it real-estate business or agency of any kind.

482 Q. There were a great many other men here that done real-estate business that you did not know about the amount of it, were there not?

A. I did not keep track of every one's business.

483 Q. So that you do not mean to say that you know as to the amount of business that he or any other real-estate man did here?

A. I could not say exactly what business any one has done.

484 Q. He might have done more business than you personally knew about?

A. Yes, sir.

485 Q. In these years of 1885, 1886, and 1887 the woods were full of you real-estate men, were they not?

A. During the years 1885 and 1886 they were not so awful think. In 1885 they were not, but in 1886 they thickened up a considerably.

112 486 Q. In 1887 they began to thin out, and in 1888—that was about the time of the real estate drop on the outside prop-

erty, and it declined pretty nearly as rapidly as it had been going up in 1886 and 1887?

A. Outside real estate is not quite as strong as it has been.

487 Q. Lots of real-estate men have rented their offices for gloves stores and candy shops. I believe that some in close proximity to where your office is located have done that, have they not?

A. Yes, sir.

488 Q. And so these fancy prices of one thousand dollars an acre were in a time then the real estate was booming, was it not?

A. At the time that I gave my opinion of one thousand dollars an acre was not at the height of the boom. It was rather before it.

489 Q. It boomed a little more after that?

489 A. Yes, sir; what we called the boom lasted for a year or a year and a half after that.

490 Q. Was the date when you fixed this boom—would it come within the booming period?

A. For that matter you could date the booming period back to 1879, when real estate first began to boom or go up.

491 Q. Don't you know that this same land that you speak of as being worth $1,000.00 an acre in the latter part of October was only worth four or five hundred dollars an acre before that?

A. I don't know that I said anything about a month before.

492 Q. I am asking you about a month before. Don't you know that in this same land that you speak of in reference to $1,000.00 an acre that it was only worth about four or five hundred dollars a month before that?

A. I think it was worth more than four or five hundred dollars.

113 493 Q. What do you think it was worth a month before that—say the first of October?

A. I think it was worth a thousand dollars an acre.

494 Q. How do you answer—in October, during October or the first of October?

A. During October.

495 Q. Don't you know that during the month of October that this land went up over $500.00 an acre—from five hundred to one thousand?

A. I do not think it did.

496 Q. Did not land adjoining that sell for $400.00 an acre the first of October?

A. I do not know that it did.

497 Q. Don't you know that lands sold there at six hundred dollars an acre by the middle of October?

A. What piece?

498 Q. Do you know the piece that was bought by Mr. Bell, called the Taylor piece, right adjoining east side?

A. I don't know what particular piece you refer to. I know the Taylor farm in a general way.

499 Q. Don't you know that a part of the farm that lies right across the right of way of the railway was bought of Mr. Bell for $600.00 an acre?

A. I do not recollect anything abo-t that.

500 Q. Do you know of a piece very close by and adjoining Patterson's subdivision which Mr. Bell himself sold at $400.00 an acre at that time?

A. I don't remember about that.

501 Q. It may all have occurred for all you know?

A. Yes, sir.

502 Q. Didn't you sell some land there yourself for less
114 than $1,000 an acre?

A. No, sir.

503 Q. Did you not buy some less than $1,000.00?

A. Yes, sir.

504 Q. Where does that lie with reference to East Side?

A. It joins it on the north.

505 Q. That is a part of Sheridam place?

A. Yes, sir.

506 Q. That is a better piece of land than East Side, is it not?

A. The lay of the ground is about the same.

507 Q. Don't you consider Sheridan place, on the north of East Side, as being more valuable in the market?

A. The Leavenworth-street frontage is probably worth a little more as lots.

508 Q. Leavenworth is one of the best streets in the city running out west, is it not?

A. It is a good street.

509 Q. This land that you speak of fronts on Leavenworth street?

A. Yes, sir.

510 Q. And that, you say, you bought at less than $1,000.00 an acre?

A. It was not at that time.

511 Q. Answer my question, whether it was not worth less than $1,000.00 an acre. What was the price at which that was transferred?

A. $900.00 an acre.

512 Q. Can you give me the date of the deed?

A. I do not remember the exact date?

513 Q. Was not it in October, 1885?

A. No, sir.

514 Q. When was it, then?

A. It was in 1886.

515 Q. What month?

A. I think July.

516 Q. Then in October, 1885, it was not worth as much
115 as it was in 1886, was it?

A. I don't think it was.

517 Q. Land has been going up all the time from October, 1885, to the summer of 1886, had it not?

A. There had been an advance, I think.

518 Q. And that was long after the railroad was laid out through there and everybody knew it was going to be built in that locality, was not it?

A. I think the railroad had been located there.

519 Q. So, when this was sold at $900.00 an acre, it had the benefit of the rise by reason of the location of the railroad and the benefit of the advance price from October, 1885, to July, 1886?

A. Yes, sir.

520 Q. And still sold for $900.00 an acre?

A. Yes, sir.

Redirect examination by Mr. OFFUTT:

521 Q. With reference to this piece you say you sold for $900.00 an acre in 1886, state whether or not you think that was the fair value of real estate?

A. We regarded it at the time we purchased it as a great bargain and at about one-half what it was worth.

522 Q. Why do you say about half? Were there any other offers made for it?

A. The day we got the deed we had an offer for the property of $1,500.00 an acre.

523 Q. Was it accepted or not?

A. It was declined.

524 Q. Who bought the property the day you got the deed? Who made the purchase that you speak of?

A. I made the purchase—the deed was made to me.

116 JOHN L. MCCAGUE, sworn for the plaintiff, examined in chief by Mr. OFFUTT, testified as follows:

My name is John L. McCague; am 32 years of age; reside in Omaha, Nebraska; have been in Omaha about 20 years; am engaged in real estate and banking; have been engaged in real-estate business since 1880; was engaged in the real-estate business in the city of Omaha during the year 1885; was doing a pretty good business.

525 Q. Were you or not acquainted with the values of real estate in the city of Omaha and the suburbs of Omaha during that year?

A. Yes, sir.

526 Q. Do you know the property known as East Side addition on the plat of the map of the city of Omaha, lying between the Belt Line railroad and Missouri Pacific, just east of the West Side depot?

A. Yes, sir.

527 Q. Do you know this property and did you know it in 1885—say October of that year?

A. In a general way I did; yes, sir.

528 Q. Could you say that you were acquainted with the values of lands in this particular locality of East Side addition during the year and particularly the fall of 1885?

A. Yes, sir.

529 Q. Were you or not dealing to any extent in that locality in real estate?

A. I was dealing to a certain extent there; not a great deal.

530 Q. In what part of that locality had you been dealing, and how was it situated with reference to East Side addition?

A. At that time I had charge of, or at least a partial agency for, what was termed Hinebaugh's addition; that was west of there; I forget just the number of acres, but perhaps it was 120 acres. There were various other pieces that I had the agency for and made
117 some sales and some purchases.

531 Q. What, in your opinion, was the fair market value of what is known as the East Side addition between 15 and 20th of October, 1885?

A. About $200.00 a lot.

532 Q. About how much would that be per acre?

A. From $800.00 to $1,000.00 an acre.

533 Q. Do you know whether or not the location of these railway lines, namely, the Belt line and the Missouri Pacific, and also the location of the depot known as West Side depot, had any effect upon values in the locality of East Side addition?

A. It had a very marked effect; property advanced quite rapidly for a time immediately after the location.

534 Q. Could you approximate? And, if so, please do so about the time it became known that the depot was located there over what it was before that came there.

A. During 90 days after the location the advance was from 75 to 100 per cent. in that locality.

535 Q. Do you know the defendant R. C. Patterson?

A. Yes, sir.

536 Q. Do you whether or not he was acquainted with the values in that section of the city?

A. Yes; I think he was acquainted at the time.

537 Q. Do you know whether or not he was operating to any extent in real estate in that locality?

A. Yes; he had considerable property; at least, which was their own or they were agent for. He represented considerable property in that vicinity at the time.

538 Q. Do you know from Mr. Patterson'- course of his purchases whether or not he had any information in regard to the location of the depot and railway lines in this locality?

A. I have no definite knowledge of that.

118 539 Q. Have you any information in regard to it?

Objected to as calling for hearsay testimony.

A. Nothing definite.

540 Q. Prior to the 15th of October was Mr. Patterson or not making any sales of real estate in this locality?

A. Yes; and had been for a good while.

541 Q. To what extent was he purchasing in that locality?

A. I cannot say positively, but he made some purchases, though.

542 Q. Do you know how much he owned in this locality on the 15th of October?

A. No, sir.

The cross examination of this witness to this deposition is waived.

Mr. OFFUTT: For the purpose of identifying the letter exhibited to the witness, Otto Boehme, of date March 2nd, 1886, addressed to Mr. Dickson, of Kansas City, and signed by him as the same letter which was exhibited to the witness, with the inquiry as to whether or not he, the witness, Otto Boehme, had written the letter, the plaintiff tenders the letter to the court for identification, with the intention to show hereafter that it is in the handwriting of the witness, Otto Boehme.

Here the testimony was adjourned by consent until Monday morning at 9 o'clock a. m. to give the plaintiff time to procure the necessary orders from the court for the production of the deed referred to in the hands of Mr. Webster.

The letter referred to, dated March 2nd, 1886, addressed to Mr. Dickson, Kansas City, is hereto attached, marked

Exhibit 00028, Apr. 28, '88, Chas. A. Potter.

119 OTTO BOEHME, sworn for the plaintiff, examined in chief by Mr. OFFUTT, testified as follows:

My name is Otto Boehme; I am 27 years of age; am manager of the Hotel Esmond, and have been engaged in that business since February 4th, 1888.

543 Q. What were you doing prior to that time; what was your occupation next before February 4th, 1888?

A. Nothing at all.

544 Q. You never had been prior to that time?

A. Yes; I had before that.

545 Q. Are you the same Otto Boehme who was employed in the real-estate office of the defendant R. C. Patterson?

Objected to on the ground that there is nothing to show that he was ever employed in that office and assuming a fact to be true without asking the witness what the facts were.

A. Yes, sir.

546 Q. Then you were employed there?

A. Yes, sir.

547 Q. By the defendant Patterson?

A. Yes, sir.

548 Q. The subpœna that was served upon you was a subpœna directing you to bring with you a copy of a letter of date M'ch 2nd, 1886, addressed to Mr. Dickson, the plaintiff in this case, at Kansas City, Missouri. The original copy of the letter was signed by yourself. Have you such copy?

A. No, sir.

549 Q. Did you bring it?

A. No, sir.

550 Q. Did you not have such a copy in your possession?

A. No, sir.

120 551 Q. Did you never have it at any time?

A. I do not know. I might have had, but I have not got any now.

552 Q. Do you remember of having a conversation with myself, Chas. Offutt, in the office of the Hotel Esmond one afternoon during last week, which conversation was had in front of the desk of the hotel, in which you stated that you had such a copy of the letter in your possession?

Objected to as leading.

A. Yes, sir.

553 Q. Did you then have that copy in your possession?

A. No, sir.

554 Q. Didn't you then state that you had the copy in your possession?

A. Yes, sir.

555 Q. Then your statement was not true at that time, or is your statement true now, which?

A. My statement is true now.

556 Q. The subpœna that was served upon you directed you also to produce the original of the deed which was made by the defendant Patterson and wife, together with the plaintiff, Dickson, and wife, to you to the 10 acres of property now known to you as East Side addition, which deed was acknowledged by Patterson and wife on the 28th day of October, 1885, and lodged for record on the 29th day of October, *on the 29th day of October*, 1885, in the office of the register of deeds of Douglas county. Will you produce such deed?

A. I have not got it, sir.

557 Q. What did you do with it?

A. I gave *ot* to Mr. Webster.

558 Q. What Webster?

A. J. L. Webster—John L. Webster.

559 Q. The same gentleman who appears for the defendant

121 R. C. Patterson and the defendant Martin in this case?

A. I don't know anything about Mr. Martin, but I know Mr. Patterson.

560 Q. Is he the same gentleman who is the attorney for the defendant in this case?

A. The same man.

561 Q. When did you give — to him?

A. I don't remember exactly when it was.

562 Q. Why did you give it to him?

Objected to as immaterial and irrelevant.

A. I do not know why I gave it to him, unless he wanted it or asked me for it.

563 Q. The deed is yours, is it not?

A. I expect it is; yes, sir.

564 Q. Please produce it to the examiner.

A. I have not got it.

565 Q. Will you get it and produce it?

A. If Mr. Webster will give it to me.

566 Q. Will you produce it? Will you ask for it?

The WITNESS: Mr. Webster, will you produce the deed that it may be given to Mr. Offutt?

567 Q. Mr. WEBSTER: That deed is in my possession, in the files at my office, and has been there for months.

Mr. OFFUTT: I want that deed and I want the examiner to certify this fact to the court and I want an order on Mr. Boehme to produce that deed, and I will ask that the further taking of this deposition be adjourned until the report can be made and certified to by the examiner.

Mr. WEBSTER: I want some more records to go in there if I produce it, and show how I got it, where I got it, and my right to it.

Mr. OFFUTT:

122 568 —. In regard to this letter, do you mean to say that you never did have a copy of the letter of date 1886?

A. No, sir.

569 Q. What do you mean by your answer that you never did or that you did?

A. I mean I might have had a copy at one time, but I have not got it now. I do not know that it is the same letter; it might be that I never had a copy of that letter.

570 Q. Look at the paper now shown you, dated Omaha, March 2nd, 1886, and signed Otto Boehme, addressed to Mr. Dickson, Kansas City, and say whether or not that is in your handwriting and answer as to whether or not you wrote that letter.

A. That looks like my handwriting.

571 Q. You say it looks like it?

A. Yes, sir.

572 Q. State whether or not it is your handwriting. Can't you answer the question?

A. I don't know whether that is my handwriting or not. I don't know whether it is or not.

573 Q. What do you think about it?

A. I think it might be and it might not be.

574 Q. Do you mean to say that you did not write it?

A. No; I do not.

575 Q. Do you mean to say that you did write it?

A. No, sir.

576 Q. In the conversation referred to a few minutes ago as having been had by you with the attorney for the plaintiff in this case, Mr. Offutt, I will ask you if this letter was not read to you in full and if you did not state in this conversation that you had written this letter to Mr. Dickson.

Objected to by counsel as cross-examination — his own witness, as leading and improper.

123 A. No; I do not recollect of you reading a letter like that.

577 Q. Then you won't say whether this is your handwriting or not?

A. No; I could not say whether you did or not.

578 Q. Do you say under oath that you cannot state whether that is your handwriting or not?

A. Yes, sir.

579 Q. Yes what?

A. That I cannot say whether it is or not.

580 Q. You wrote a letter about that time to Mr. Dickson, did you not?

Objected to as cross-examining his own witness, as leading and improper. Withdrawn.

581 Q. Did you or not write a letter about that time to Mr. Dickson—that is to say, about March 2nd, 1886?

A. Yes, sir.

582 Q. Have you read the letter that I exhibit to you of date March 2nd, 1886, here to-day?

A. I have read a part of it; yes, sir.

583 Q. Will you please read it all; it may be that that will refresh your recollection as to whether you wrote it or not?

A. Yes; I wrote a letter similar to that to Mr. Dickson.

584 Q. You have read all the letter?

A. Yes, sir.

585 Q. After having read all this letter are you able to say whether or not you wrote this letter to Mr. Dickson?

A. No; I am not.

586 Q. Do you say on your oath as a witness in this case and under the penalty of an oath that you do not know whether you wrote this paper or not?

124 Objected to as improper and being a cross-examination of the plaintiff's witness and leading, and that counsel has no right to put the statement to the witness under oath when he knows that the witness has been sworn.

587 Q. You came here to testify under subpœna several days ago, did you not?

A. Yes, sir.

588 Q. Who came with you at the time you came, or did any one come with you at the time?

Objected to as immaterial.

A. Yes; I came with somebody.

589 Q. Who?

A. R. C. Patterson and those two gentlemen, brothers of Mr. Patterson, and I think somebody else, I do not remember now.

590 Q. Were those brothers of Mr. Patterson present here to-day?

A. Yes, sir.

591 Q. Are they present here now?

A. Yes, sir.

Mr. OFFUTT: For the purpose of identifying the letter exhibited to the witness, Otto Boehme, of date March 2nd, 1886, addressed to

Mr. Dickson, Kansas City, and signed by him as the same letter which was exhibited to the witness with the inquiry as to whether or not he, the witness, Otto Boehme, had written the letter, the plaintiff tenders the letter to the court for identification with the intention to show hereafter that it is in the handwriting of the witness, Otto Boehm. The letter introduced marked Exhibit No. —.

Here the testimony was adjourned by consent until Monday morning at 9 o'clock a. m., to give the plaintiff time to procure the necessary orders from the court for the production of the deed referred to in the hands of Mr. Webster.

125 I hereby certify that the above and foregoing is a true and full copy of the testimony given by Otto Boehme before me May 11th, 1888.

C. A. POTTER,
Examiner in Chancery.

Certificate.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I, Chas. A. Potter, examiner in chancery, duly appointed by the circuit court of the United States for the district of Nebraska, in the eighth circuit, do hereby certify that the several days named in the depositions hereto annexed I was attended at the office named in this annexed notice, in the city of Omaha, by the counsel and witnesses aforesaid; that the said witnesses were duly sworn and examined and the depositions were reduced to writing; the reading to the witnesses and subscribing in my presence was waived by both parties.

I further certify that Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 (true, exact, and perfect copies of which are hereto annexed, marked Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and except 28) were introduced in evidence in said cause during the taking of said depositions.

Dated July 15th, 1888.

C. A. POTTER,
Examiner in Chancery.

Fees.

Depositions, 350 folios, at 20 cents per folio	$70 00
Swearing 13 witnesses, at 10 cents	1 30
28 exhibits, at 10 cents each	2 80
Certificate, binding and indexing	1 25
	$75 35

126 EXHIBIT 1. Filed with the Deposition of Frank P. Dickson, Apr. 27th, 1888. C. A. Potter, Examiner in Chancery.

OMAHA, NEB., *May* 18, 1885.

DEAR FRANK: I am about buying another addition. When you were up here last fall you spoke of wishing to take an interest in the next piece of property I purchased.

This 10 acres will cost $4,800, $2,500 cash. They will make 48 lots, worth $2.50 each. If you want to go in it will cost you $1,250 cash, balance to suit. Please answer immediately what you wish, as there are two other parties waiting for me to give them *an* answer about going in along.

Respectfully, R. C. PATTERSON.

EXHIBIT "2." Filed with the Deposition of Frank P. Dickson, April 27th, 1888. C. A. Potter, Examiner in Chancery.

R. C. Patterson & Co., real-estate office, N. E. cor. Thirteenth and Farnham Sts.

DEAR FRANK: Yours rec'd, and I note what you say. The commission on the sale of this property would be 5 per cent. on the dollar. That I will state hardly is enough, considering the distance (and small am't of sale) an agent has to go to show the property, but that is all I would be willing to pay myself, consequently all I would charge. The probable amount of expense would be in putting the property on sale—that is, surveying, platting, and advertising—about $300. The net profits above all expenses, to put it low, would be, I think, at least $6,000. I believe if real-estate
127 activity holds its own we would never be called upon to furnish any new capital to pay off the deferred payments. From Patterson's subdivision we have already realized three times as much in cash as our present annual payment is.

The property should go in our names (Patterson and Dickson). Then do you make me your trustee or give power of att'y to sign your and your wife's names to contract and deed. I would suggest we name it Patterson and Dickson's addition to Omaha. Now, I believe I have answered your questions as well as I can. I would further state in regard to this 10 acre that every foot of it is good groun-. No waste ground. Now, Frank, I'll be pleased and delighted to have you interested in this new addition, and I really prefer you to any one else, but yesterday I spoke to a wealthy gentleman about this new addition—that I was about to own it, and perhaps would take a partner in. He knew the ground and all about it, and said right away when I told him the terms and price that he would go in if I said so. I replied I had written a friend and had not heard from him yet. He has been in my office twice since to learn if I heard from you. He has been in just since I sat down to write this letter, and I told him I expected to hear from you by Sunday at least. So if you wish to go in answer right

away either by telegraph or letter so I can answer him. You can have a few days to raise the cash payment, and if you really want to go in and don't have the ready money I will try and wait till you do have, providing it is not longer than the 1st of June.

I consider this as good thing as there is offered now on the market. It is just on this side of Patterson's subdivision and a ¼ of a mile nearer the city and nearer to the main street. I have 5 new houses on Patterson's sub., also the necessary outbuildings.

I tell you Patterson's sub. looks like another place since you were here. The inhabitants have their lots fenced and trees planted, &c.

128 I have another add. of 72 lots, or will have as soon as the ground is surveyed. This add'r is just a short distance from the other two add'n-. Patterson's sub. makes me $10,000 net; Hinebaugh and Patterson's add'n I count on $8,000 net. On this 10 acres I speak to you about I count $8,000 net, but put to you at $6,000.

Better be too low than high.

Mattie is well and happy. I am doubly happy with her. Love to all.

Resp'ct., R. C. PATTERSON.

EXHIBIT "3." Filed with the Deposition of Frank P. Dickson April 27, 1888. C. A. Potter, Examiner in Chancery.

R. C. Patterson & Co., real-estate office, N. E. cor. Thirteenth and Farnam Sts.

OMAHA, NEB., 5, 25, 1885.

DEAR FRANK: Your card rec'd and I note that you say you will accept my proposition and go in for one-half of the value of the 10 acres.

On the strength of your card I have notified my friend to-day that you had accepted my proposition and that therefore I could not take him in. I now have an abs't of the property in my possession and am about to make a careful examination of the same. As soon — I am satisfied of the title to this property being clear and unencumbered I am to pay over the cash payment of $2,500.00. That I expect to do by Thursday or Friday of this week. If I can draw on you by that time all will be right. In the meantime I guess I had better prepare a mortgage to give back. This myself and wife will sign and then send to you for the signatures of yourself and wife also.

Mattie and I were out yesterday and drove over the property in question. She thought it a very pretty piece of ground.

129 Hoping to hear from you soon, I am,

Very respectfully, R. C. PATTERSON.

EXHIBIT "4." Filed with the Deposition of Frank P. Dickson, April 27, 1887. C. A. Potter, Examiner in Chancery.

Customer's Draft.

Commercial National bank.

$1,250.00. OMAHA, NEBRASKA, *May* 30, 1885.

At sight pay to the order of Commercial Nat'l bank twelve hundred and fifty dollars, with exchange.

R. C. PATTERSON.

To Frank P. Dickson, Kansas City, Mo.

(Commercial Nat'l bank. No. 25222. Report by No. Omaha, Neb.)

On the face is the following: Bank of Kansas City. Paid. May 1, 1885. Mail teller.

Endorsed: Pay to the order of Bank of Kansas City, Kansas City, Mo., for account of Commercial Nat'l bank, Omaha, Neb. A. P. Hopkins, cashier.

EXHIBIT 5. Filed April 17, 1888, with the Deposition of Frank P. Dickson. C. A. Potter, Examiner in Chancery.

R. C. Patterson & Co., real-estate office, N. E. cor. Thirteenth and Farnam.

OMAHA, NEB., 5, 29, 1885.

DEAR FRANK: I have examined the abst. to the 10 acres we bought and find it all O. K. except on one transfer, and on that they are getting an affidavit, which will then straighten it out by to-morrow.

The reason I have not sent the mortgage for signatures was 130 *was* when I discovered in the abs't one transfer unsatisfactory I thought I would wait till I would see if the parties who owned the lands could make it right. Whilst it was no serious matter at all about this one transfer, I was determined it should be perfect before accepting it. I was afraid yesterday they had a notion to back out. When I confronted them with the abs't, requiring it to be straightened, one of the real-estate ag'ts here got around them and told them he could do much better for them if they would let him have the ground to cut up into lots and sell on commission for them. I told them that might be true and then it might not; that the agent was only after some commission. They saw the fact in the case, and so went to work to get me an affidavit. I rec'd your lette- this morning and note that you say I can draw on you for $1,250.00, your one-hal*d* cash payment on the 10 acres. Just as soon as everything is ready I will do so. I will send you a rough plat of the ground as soon as I can get time to draw it off. Herewith please find inclosed a mortgage and notes for signatures. Go before a notary public and

sign m'tg. Return same at once to me so I can deliver it on receipt of warranty deed. We are both very well.

Resp't, R. C. PATTERSON.

EXHIBIT "6." Filed Apr. 17, 1888, with the Depositions of Frank P. Dickson. C. A. Potter, Examiner in Chancery.

R. C. Patterson & Co, real estate office, N. E. cor. Thirteenth and Farnam Sts.

OAMHA, NEB., *June* 5, 1885.

DEAR FRANK: Your letter inclosing the return m'tge and notes has been rec'd this day. The Commercial Nat'l bank has just notified me there is to my credit $1,250, sent by you from Kan-
131 sas City. There is still one transfer on the abs't to the property we bought that I am not satisfied with yet. The parties, Mr. Tukey and Keysor, say they can make it right as soon as they receive an affidavit from Denver, which is expected every day. I have notified them twice that we are ready to pass papers and money as soon as everything is straight on abs't. The abs't really shows a good title, and I would accept it rather than not have it at all; but the transfer I want them to make right is simply one that eastern insurance companies might perhaps object to in case the subsequent parties to whom we expect to sell should ever apply for a loan on their property. I thought now was the proper time to make the matter right. Just as soon as we get the matter straight I will let you know all about it and send you a printed report of the transfer to us. I sold two lots yesterday in Patterson's subdivisiob at $200 each. The two lots in the same add'n I offered to Jokie at $150 each last February I sold the 1st day of May for $475 in cash. I sold one to my brother James last Dec., '84, in same add. for $150 cash. I resold 25th April at $250 on monthly payments. Real estate here is not so good as it was a week ago.

As ever, yours truly,

R. C. PATTERSON.

Richard C. Patterson, office cor. Thirteenth & Farnam Sts.

OMAHA, NEB., *June* 11, 1885.

EXHIBIT "7." Filed April 27, 1888, with the Deposition of Frank P. Dickson. C. A. Potter, Examiner in Chancery.

MY DEAR FRANK: I herewith inclose a rough plat of our proposed addition to the city of Omaha. The title to this 10 acres was yesterday put in the name of Richard C. Patterson and Frank P. Dickson in common.

132 The warranty deed is now on record in the county court. There will be a report of the transfer published to-morrow, which I will send you.

This is a rough plat sure enough, but it is the best I can furnish at present. I made it myself since I sat down here at the desk. I

have put the proposed prices on the lots. There is no telling but I may have to vary very much from them until I get started.

It will now have to be surveyed and platted. Real estate is not active like it was. I expect and hope it will pick up this fall.

Yours, very resp't, R. C. PATTERSON.

(Here follows plat marked p. 132*a*.)

133 EXHIBIT "8." Filed April 27, 1888, with the Deposition of Frank P. Dickson. C. P. Potter, Examiner in Chancery.

R. C. Patterson & Co., real estate office, N. E. cor. Thirteenth and Farnam Sts.

OMAHA, NEB., *July* 17, 1885.

DEAR FRANK: I send you by this mail the dedicatory plat of Patterson and Dickson place for signature and acknowledgment. You will perhaps observe that the lots are a little longer than I indicated they would be on the plat I sent you before. This was brought about by the fact of there being a little over ten acres of ground in the piece bought. The two extra lots instead of being 37 ft. wide each are 42.5 each.

Go before a notary, acknowledge and return the plat. Mother and Paul are here and seem to be very well contented. I met Paul at the train on his arrival and brought him out in the buggy behind my horse. I guess I must have driven a little too fast for Paul's enjoyment, as he now peremptorily declines to ride any more with me or behind my horse. He says that horse travels too fast for him. Can't you and Emily come up some time before long?

Yours very truly, R. C. PATTERSON.

EXHIB. "9." Filed April 27, 1888, with the Deposition of Frank P. Dickson. C. A. Potter, Examiner in Chancery.

Richard C. Patterson, office cor. Thirteenth & Farnam.

OMAHA, NEB., *Aug.* 17, 1885.

MY DEAR FRANK: I sent you the "Omaha Bee" of Aug. 15, containing a plat of Patterson and Dickson place, "advertised
134 for the 1st time." I hope you rec'd the paper. The "Bee" is the paper of this State, having twice the circulation of any other. I have made a contract to advertise Patterson and Dickson place in the form you saw it for 4 mos. from Aug. 15, every other day, preferred position, at the rate of $45.00 per month. It is a little less than the usual rates charged by that paper, yet it seems high. I advertised Patterson sub. last fall in the same paper and it paid well. How this may turn out I am sure I can't tell. We may have good luck in selling and then we may have poor. Real estate is and has been dull here for over two months; that is one reason I held back from advertising P. and D.'s place, as I thought it would not justify to pay for it in the dull season.

When Paul was up here he spoke of wanting to buy a lot from us. He said he had the cash and could pay for it all. I told him I would sell him a lot for less than to any one else if you were agreed and for him to consult you about it. I have not heard from him since. I thought we might let him have a lot at $150 cash down, and I believe told him so. If he takes it, I'll see that he don't lose anything.

I returned last Wednesday from Minn. We were up to Lake Minnetonka for a few days; that is a delightful place to go in the summer. Fishing is very fine.

The wife of the preacher who married you caught a very large pickerel the morning we saw her. I wish you and Emily had been up there, too. We would have enjoyed having you both very much.

Mattie is still up North, at my brother's. I can hardly wait till she returns, as I am so lonely, but I don't want her to know it now. Hoping to hear from you at your convenience—

I am very truly,

R. C. PATTERSON.

135 EXHIBIT "10." Filed April 27, 1888, with the Deposition of Frank P. Dickson. C. A. Potter, Examiner in Chancery.

R. C. Patterson & Co., real-estate office, N. E. cor. Thirteenth & Farnam Sts.

OMAHA, NEB., *Aug.* 24, 1885.

MY DEAR FRANK: Did you receive my last letter and "Omaha Bee" sent you? How do you like the appearance of Patterson and Dickson place?

A great many inquir-es have been in since the ad. came out. I have been out *yo* the addition every day with persons, showing them the beauty of the place. I fully expect now to perfect some sales.

There is one great thing needed on the addition to make it a grand success, and that is a good new house with a respectible family living in it. I feel, however, much encouraged for the success of this addition. If I felt able and could get Mattie to go out that far, I would build on it. It would give a rich return. I would be willing, if you were, to deed a good man a couple of lots for nothing, on condition he would build right away a house worth not less than $2,000.

It would pay us well. It is a nice place and promises to be near the Belt Line r'y.

What do you think of the suggestion above in case I strike the right man?

My precious wife will be home to-morrow. I never was so lonely as I have been these last two weeks.

How are the folks all?

Write soon.

Yours in haste, R. C. PATTERSON.

136 EXHIBIT 11. Filed April 27, 1888, with the Depositions of Frank P. Dickson. C. A. Potter, Examiner in Chancery.

R. C. Patterson & Co., real-estate, office, N. E. cor. Thirteenth and Farnam Sts.

OMAHA, NEB., *Aug.* 26, 1885.

MY DEAR FRANK: Yours rec'd and contents noted. Am surprised you did not receive the paper with P. & D.'s place in. I sent it to you on last Saturday eve. one week ago. I sent you another paper by to-day's mail. I also sent you the Omaha Legal News, with a report in of Patterson and Dickson's place being put on record in the county record office. Did you get it? I got the very lowest rate *an* advertising that it was possible to get. I am quite busy now in real estate. I take 3 parties this eve. to P. & D.'s place and Patterson's sub. If I succeed in making a sale will report immediately.

Yours as ever, R. C. PATTERSON.

EXHIBIT "12." Filed April 27, 1888, with the Deposition of Frank P. Dickson. C. A. Potter, Examiner in Chancery.

R. C. Patterson & Co., real-estate office, N. E. cor. Thirteenth and Farnam Sts.

OMAHA, NEB., *Oct.* 21, 1885.

DEAR FRANK: I have sold our ten acres to-day for $6,000, an advance of $1,200. It did not turn out as well as I expected. There has been about 10 thousand lots of these kind thrown on the market this summer. I did so well last summer on Patterson's subdivision that everybody for 4 miles round platted up their
137 farms and sold lots at $125 & $150 each and even less.

I thought if I couldn't do better than that I wouldn't sell at all in lots. This is a very handsom- profit for the length of time we have held it. He pays $3,000 cash and the other $700 inside of six months and assumes the mortgage and all taxes. It nets us a little over $500 each profit. As soon as deed is returned and delivered he is to pay the money, $3,000 cash and give note for balance due. I'll send you draft for your half right away on receipt of money.

Get my wife to sign, and the notary up here, who knows her signature, will acknowledge it without her presence. You and Emily will have to arrange somehow about having it done either in Mo. or Colo.

I send bill and statement on back of bill of the expense of the add. Return deed as soon as you can get Emily.

Am very busy; acre property is the rage.

Yours, &c., R. C. PATTERSON.

EXHIBIT *L2½*. Filed with the Deposition of Frank P. Dickson April 27, 1888. C. A. Potter, Examiner in Chancery.

R. C. Patterson, real-estate office, N. E. cor. Thirteenth & Farnam Sts.

OMAHA, NEB., *Oct.* 30, 1885,

F. P. Dickson, Esq., Kansas City, Mo.:

DEAR FRANK: Herewith please find inclosed my c'k for $1,500. When I sent you statement of expenses and our net profit on sale of property I neglected or rather forgot to figure in the interest we owed on the $2,300 from the 10th day of June to date of deed,
138 which is the 28th of Oct. Our net profit all told was $948.35½; of that am't os $474.18, which added to $1,250, $1,724.18, due to you, about 100% for each on the investment. The $1,500 c'k which I send you herewith and the $224.18, which is yet due you and which will be paid to you on or before six months from date hereof; and, furthermore, this writing shall be your note of claim for that amount from me, with interest at the rate of ten (10%) per annum until paid.

R. C. PATTERSON.

(Here follows map marked p. 138½.)

139 I do hereby certify that I have accurately surveyed and staked out the lots, streets, alleys, and avenues of East Side addition, in Douglas county, State of Nebraska, as shown upon the accompanying plat, and that said addition is situated as follows, to wit, N. ½ S. ½, S. W. ¼ S. W. ¼, sec. 20, T. 15, R. 13.

M. P. KENNEY, *Surveyor.*

I, Richard C. Patterson, the proprietor of the land included in the foregoing plat of East Side addition, in Douglas county, State of Nebraska, do hereby state and admit that the said plat is with the free consent and in accordance with the desire of the undersigned, proprietor. I do hereby dedicate to the public use the streets, alleys, and avenues.

Dated 14th April, 1886.

RICHARD C. PATTERSON.

STATE OF NEBRASKA, } *ss:*
Douglas County, }

On this 14th day of April, 1886, before me, a notary public in and for said county, personally came Richard C. Patterson, to me personally known to be the identical person that signed the above and foregoing admission and statement as grantor, and acknowledged said instrument to be his voluntary act and deed.

In witness thereof I have hereunto set my hand and affixed my official seal on the day and year above written.

[Notarial Seal, Alfred Millard, Douglas County.]

ALFRED MILLARD,
Notary Public.

Entered in numerical index and recorded May 15th, 1886, at 11¾ o'clock a. m.

C. P. NEEDHAM,
County Clerk.

STATE OF NEBRASKA, } ss:
Douglas County, }

(Here follows plat marked p. 139½.)

140 I, T. A. Megeath, register of deeds in and for said State and county, do hereby certify that I have compared the above and foregoing instrument as it appears on record in the office of said register of deeds, in Book 67 of Deeds, on page 498, and that the same is a full and correct copy thereof.

Witness my signature and seal, at Omaha, this 24th day of April, A. D. 1888.

[SEAL.] T. A. MEGEATH,
Register of Deeds.

141 EXHIBIT 00017, Apr. 28, '88. Chas. A. Potter.

Alonzo P. Tukey *et al.*
to
Richard C. Patterson *et al.* } 6.

Know all men by these presents: That we Alonzo P. Tukey and Elizabeth I. M. Tukey, his wife and William W. Keysor and Jennie E. Keysor, his wife all of Omaha, Douglas county and State of Nebraska in consideration of the sum of forty-eight hundred dollars in hand paid by Richard C. Patterson and Frank P. Dickson of Douglas county and State of Nebraska do hereby sell and convey unto the said Richard C. Patterson and Frank P. Dickson the following-described premises situated in the county of Douglas and State of Nebraska to wit:

The north half of the south half of the southwest quarter of the southwest quarter of section twenty (20) in township fifteen (15) north of range thirteen (13) east, containing ten acres more or less according to the Government survey, and we hereby covenant with said Richard C. Patterson and Frank P. Dickson that we hold said premises by good and perfect title that we have good right and lawful authority to sell and convey the same that they are free and clear of all liens and incumbrances whatsoever and we covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever, and the said Elizabeth I. M. Tukey and Jennie E. Keysor hereby relinquishes her right of dower in and to the above-described premises.

Signed this ninth day of June, A. D. 1885.

ALONZO P. TUKEY.
ELIZABETH I. M. TUKEY.
WM. W. KEYSOR.
JENNIE E. KEYSOR.

In presence of—
DEXTER L. THOMAS.

STATE OF NEBRASKA, } ss:
Douglas County, }

142 On this tenth day of June, A. D. 1885, before me, Dexter L. Thomas, a notary public within and for said county, personally came Alonzo P. Tukey & Elizabeth I. M. Tukey, his wife, and William W. Keysor and Jennie E. Keysor, his wife, personally to me known to be the identical persons whose names are affixed to the above instrument as grantors, and severally acknowledged the execution of the same to be their voluntary act and deed for the purposes therein expressed.

In witness whereof I have hereunto subscribed my name and affixed my official seal, at Omaha, Nebraska, on the date last above written.

[Notarial Seal, Dexter L. Thomas, Douglas County, Nebraska.]

DEXTER L. THOMAS,
Notary Public.

Entered in numerical index and recorded June 10th, 1885, at 3¼ o'clock p. m.

H. T. LEAVITT,
County Clerk.

STATE OF NEBRASKA, } ss:
Douglas County, }

I, T. A. Megeath, register of deeds in and for said State and county, do hereby certify that I have compared the above and foregoing instrument as it appears on record in the office of said register of deeds, in Book 59 of Deeds, on page 449, and that the same is a full and correct copy thereof.

Witness my signature and seal, at Omaha, this 24th day of April, A. D. 1888.

[SEAL.] T. A. MEGEATH,
Register of Deeds.

EXHIBIT 00018, Apr. 28, '88. Chas. A. Potter.

R. C. Patterson *et al.*
to
Alonzo P. Tukey *et al.*

For cancellation see Book 64, page 68.

Know all men by these presents: That we Richard C. Patterson and Martha Belle, his wife, and Frank P. Dickson and Emily
143 A. his wife, in consideration of twenty-three hundred dollars in hand paid do hereby grant, bargain, sell and convey unto Alonzo P. Tukey and William W. Keysor the following-described real estate situate in the county of Douglas and State of Nebraska, to wit: The north half of the south half of the southwest quarter of the southwest quarter of section twenty (20) township fifteen (15)

range (13) containing ten (10) acres together with all the appurtenances thereunto belonging and we do hereby covenant with the said Alonzo P. Tukey and William W. Keysor their heirs and assigns that we are lawfully seized of said premises that they are free from incumbrance and we do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever. Provided always and these presents are upon this condition that whereas Richard C. Patterson and Frank P. Dickson have executed and delivered to said Alonzo P. Tukey and Wm. W. Keysor, three promissory notes for the payment of twenty-three hundred dollars in three (3) annual payments of seven hundred — one year from date hereof, eight hundred dollars two years from date hereof and eight hundred dollars three years from date hereof each and all of the above annual payments to bear eight per cent per annum payable annually.

Now, if the said Richard C. Patterson and Frank P. Dickson shall well and truly pay or cause to be paid the said sum of money in said note mentioned with the interest thereon according to the tenor and effect of said note then these presents shall be null and void. But if said sum of money or any part thereof or any interest thereon is not paid when the same is due then in that case the whole of said sum and interest shall and by this indentur- does immediately become due and payable or if the taxes and assessments of every nature which are assessed or levied against said premises are not paid at the time when the same are by law made due and payable
144 then in like manner the whole of said sum shall immediately become due and payable and upon forfeiture of this mortgage or in case of default in any of the payments hereby provided the said Alonzo P. Tukey and Wm. W. Keysor shall be entitled to the immediate possession of said premises and in the event of the foreclosure of this mortgage a reasonable sum to be determined by the court shall be awarded in addition to the judgment.

Signed this 10th day of June, A. D. one thousand eight hundred and eighty-five.

RICHARD C. PATTERSON.
MARTHA BELLE PATTERSON.
FRANK P. DICKSON.
EMILY A. DICKSON.

In presence of—
ALFRED MILLARD.

STATE OF NEBRASKA, } ss :
Douglas County, }

On this 29th day of May *29th*, A. D. 1885, before me, Alfred Millard, a notary public in and for said county, personally came the above-named Richard C. Patterson and Martha Belle Patterson, who are personally known to me to be the identical persons whose names are affixed to the above instrument as grantors, and they acknowledged the instrument to be their voluntary act and deed.

Witness my hand and official seal the date aforesaid.

[Notarial Seal, Alfred Millard, Douglas County, Nebraska.]

ALFRED MILLARD,
Notary Public.

STATE OF MISSOURI, } ss:
Jackson County, }

On this 4th day of June, A. D. 1885, before me, C. W. Bryan, a notary public in and for said county, personally appeared the above-named Frank P. Dickson and Emily A. Dickson, who are personally known to me to be the identical persons whose names are affixed to the above instrument as grantors, and they acknowledged the instrument to be their voluntary act and deed.

Witness my hand and official seal the date aforesaid.

My term as notary public expires 1st June, 1886.

[Seal C. W. Bryan, Notary Public, Kansas City, Jackson Co., Mo.]

C. W. BRYAN,
Notary Public.

145 Entered in numerical index and recorded June 10th, 1885, at 3¼ o'clock p. m.

H. T. LEAVITT,
County Clerk.

STATE OF NEBRASKA, } ss:
Douglas County, }

I, T. A. Megeath, register of deeds in and for said State and county, do hereby certify that I have compared the above and foregoing instrument as it appears on record in the office of said register of deeds, in Book 25 of Mortgages, page 295, and that the same is a full and correct copy thereof.

Witness my signature and seal, at Omaha, this 24th day of April, 1888.

[SEAL.] T. A. MEGEATH,
Register of Deeds.

(Here follows diagram marked p. 145½.)

146 I hereby certify that I have accurately surveyed and staked out the lots, streets, and alleys of Patterson and Dickson place as shown on the accompanying plat, and that the said place is located in the N. ½ S. ½ of S. W. ¼ of S. W. ¼ of section twenty, town. fifteen north, range thirteen east, of the 6th P. M.

J. E. HOUSE, *Surveyor.*

We, Richard C. Patterson and Frank P. Dickson, proprietors of the land included in the accompanying plat and in whom the fee-simple title to the streets and alleys shown in said plat is now vested, do hereby state and admit that said plat is in accordance with our

desires and wishes, and we do hereby dedicate to public use our interests in the said streets and alleys and ratify and approve said plat.

In witness whereof we have hereunto set out hands this — day of ——, A. D. 1885.

RICHARD C. PATTERSON.
FRANK P. DICKSON.

In presence of—
—— ——.

THE STATE OF NEBRASKA, } ss:
Douglas County, }

On this 17th day of July, A. D. 1885, before me, a notary public duly commissioned and qualified for and residing in said county, personally came Richard C. Patterson, to me known to be the identical person whose names is affixed to the foregoing conveyance as grantor, and he acknowledged the instrument to be his voluntary act and deed.

Witness my hand and seal notarial the day and year last above written.

[Notarial Seal, Alfred Millard, Douglas County, Nebraska.]

ALFRED MILLARD,
Notary Public.

THE STATE OF MISSOURI, } ss:
Jackson County, }

147 On this 18th day of July, A. D. 1885, before me, a notary public commissioned and qualified for and residing in said county, personally came Frank P. Dickson, to me known to be the identical person whose name is affixed to the foregoing conveyance as grantor, and he acknowledged the instrument to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

My commission expires June 1st, 1886.

[Seal C. W. Bryan, Notary Public, Jackson County, Mo.]

C. W. BRYAN,
Notary Public.

Entered in numerical index and recorded August 21st, 1885, at 4¼ o'clock p. m.

——— ———,
County Clerk.

STATE OF NEBRASKA, } ss:
Douglas County, }

I, T. A. Megeath, register of deeds in and for said State and county, do hereby certify that I have compared the above and foregoing instrument as it appears on record in the office of said register of deeds,

Witness my hand and official seal the date aforesaid.

[Notarial Seal, Alfred Millard, Douglas County, Nebraska.]

ALFRED MILLARD,
Notary Public.

STATE OF MISSOURI, } ss:
Jackson County, }

On this 4th day of June, A. D. 1885, before me, C. W. Bryan, a notary public in and for said county, personally appeared the above-named Frank P. Dickson and Emily A. Dickson, who are personally known to me to be the identical persons whose names are affixed to the above instrument as grantors, and they acknowledged the instrument to be their voluntary act and deed.

Witness my hand and official seal the date aforesaid.

My term as notary public expires 1st June, 1886.

[Seal C. W. Bryan, Notary Public, Kansas City, Jackson Co., Mo.]

C. W. BRYAN,
Notary Public.

145 Entered in numerical index and recorded June 10th, 1885, at 3¼ o'clock p. m.

H. T. LEAVITT,
County Clerk.

STATE OF NEBRASKA, } ss:
Douglas County, }

I, T. A. Megeath, register of deeds in and for said State and county, do hereby certify that I have compared the above and foregoing instrument as it appears on record in the office of said register of deeds, in Book 25 of Mortgages, page 295, and that the same is a full and correct copy thereof.

Witness my signature and seal, at Omaha, this 24th day of April, 1888.

[SEAL.] T. A. MEGEATH,
Register of Deeds.

(Here follows diagram marked p. 145½.)

146 I hereby certify that I have accurately surveyed and staked out the lots, streets, and alleys of Patterson and Dickson place as shown on the accompanying plat, and that the said place is located in the N. ½ S. ½ of S. W. ¼ of S. W. ¼ of section twenty, town. fifteen north, range thirteen east, of the 6th P. M.

J. E. HOUSE, *Surveyor.*

We, Richard C. Patterson and Frank P. Dickson, proprietors of the land included in the accompanying plat and in whom the fee-simple title to the streets and alleys shown in said plat is now vested, do hereby state and admit that said plat is in accordance with our

desires and wishes, and we do hereby dedicate to public use our interests in the said streets and alleys and ratify and approve said plat.

In witness whereof we have hereunto set our hands this — day of ——, A. D. 1885.

RICHARD C. PATTERSON.
FRANK P. DICKSON.

In presence of—
—— ——.

THE STATE OF NEBRASKA, } ss:
Douglas County, }

On this 17th day of July, A. D. 1885, before me, a notary public duly commissioned and qualified for and residing in said county, personally came Richard C. Patterson, to me known to be the identical person whose names is affixed to the foregoing conveyance as grantor, and he acknowledged the instrument to be his voluntary act and deed.

Witness my hand and seal notarial the day and year last above written.

[Notarial Seal, Alfred Millard, Douglas County, Nebraska.]

ALFRED MILLARD,
Notary Public.

THE STATE OF MISSOURI, } ss:
Jackson County, }

147 On this 18th day of July, A. D. 1885, before me, a notary public commissioned and qualified for and residing in said county, personally came Frank P. Dickson, to me known to be the identical person whose name is affixed to the foregoing conveyance as grantor, and he acknowledged the instrument to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

My commission expires June 1st, 1886.

[Seal C. W. Bryan, Notary Public, Jackson County, Mo.]

C. W. BRYAN,
Notary Public.

Entered in numerical index and recorded August 21st, 1885, at 4¼ o'clock p. m.

——— ———,
County Clerk.

STATE OF NEBRASKA, } ss:
Douglas County, }

I, T. A. Megeath, register of deeds in and for said State and county, do hereby certify that I have compared the above and foregoing instrument as it appears on record in the office of said register of deeds,

in Book 60 of Deeds, on page 619, and that the same is a full and correct copy thereof.

Witness my signature and seal, at Omaha, this 24th day of April, A. D. 1888.

[SEAL.] T. A. MEGEATH,
Register of Deeds.

148 & 149 EXHIBIT 00020. Apr. 28, '88. Chas. A. Potter.

R. C. Patterson *et ux.* to Otto Boehme. } 7.

Know all men by these presents that we Richard C. Patterson and Martha Belle (his wife) and Frank P. Dickson and Emily A. Dickson (his wife) in consideration of ten thousand ($10,000) dollars in hand paid do hereby grant, bargain, sell, convey and confirm unto Otto Boehme the following-described real estate situate in the county of Douglas in the State of Nebraska, to wit: The north half of the south half of the southwest quarter of the southwest quarter of section twenty (20) in township fifteen (15) north of range thirteen (13) east containing ten acres more or less according to the Government survey—now known as Patterson and Dickson place subject to one mortgage of twenty-three hundred dollars and all taxes of every kind, together with all the tenements, hereditaments, and appurtenances to the same belonging and all the estate, title, dower, claim or demand whatsoever of the said R. C. Patterson *et al.* of, in or to the same or any part thereof. To have and to hold the above-described premises with the appurtenances unto the said Otto Boehme and to his heirs and assigns forever, and we, the said R. C. Patterson *et al.* for ourselves and our heirs, executors, and administrators, do covenant with the said Otto Boehme and his heirs and assigns that we are lawfully seized of said premises that they are free from incumbrance, that we have good right and lawful authority to sell the same and that we will and our heirs, executors, and administrators shall warrant and defend the same unto the said Otto Boehme and his heirs and assigns forever against the lawful
150 claims and demands of all persons whomsoever.

In witness whereof we have hereunto set our hands this 28th day of October, A. D. one thousand eight hundred and eighty-five.

RICHARD C. PATTERSON.
MARTHA BELLE PATTERSON.
FRANK P. DICKSON.
EMILY A. DICKSON.

In presence of—
ALFRED MILLARD.

THE STATE OF NEBRASKA, } ss:
Douglas County, }

On this 28th day of October, A. D. 1885, before me, a notary public in and for said county, personally came the above-named Richard C. Patterson and Martha Belle Patterson, who are personally known to *ne* to be the identical persons whose names are affixed to the above deed as grantors, and they acknowledged the instrument to be their voluntary act and deed.

Witness my hand and official seal the date aforesaid.

[Notarial Seal, Alfred Millard, Douglas County, Nebraska.]

ALFRED MILLARD,
Notary Public.

STATE OF MISSOURI, } ss:
County of Jackson, }

Be it remembered that Frank P. Dickson, on this 23d day of October, A. D. 1885, before me personally appeared and to me known .o be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

In testimony whereof I have hereunto set my hand and official seal, at my office, in Kansas City, the day and year first above written.

My term of office as notary public expires July 3, 1889.

[Seal William D. Carlile, Notary Public, Jackson County, Missouri.]

WILLIAM D. CARLILE,
Notary Public.

Commission expires July 3, 1889.

151 STATE OF COLORADO, }
County of El Paso. }

Be it remembered that Emily A. Dickson, on this 27th day of October, A. D. 1885, before me personally appeared and to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

In testimony whereof I have herewith set my hand and affixed my official seal, at my office, in Colorado Springs, Colo., the day and year first above written.

My term of office as a notary public expires January 7, 1888.

[Seal J. E. McIntyre, Notary Public, El Paso County, Colorado.]

J. E. McINTYRE,
Notary Public.

Entered in numerical index and recorded October 29th, A. D. 1885, at 10.30 o'clock a. m.

GUST. BENEKE,
County Clerk.

STATE OF NEBRASKA, } ss:
Douglas County, }

I, T. A. Megeath, register of deeds in and for said State and county, do hereby certify that I have compared the above and foregoing instrument as it appears on record in the office of said register of deeds, in Book 62 of Deeds, on page 396, and that the same is a full and correct copy thereof.

Witness my signature and seal, at Omaha, this 24th day of April, A. D. 1888.

[SEAL.] T. A. MEGEATH,
Register of Deeds.

EXHIBIT 00021. April 28, '88. Chas. A. Potter.

Ottoe Boehme to R. C. Patterson. } 4.

152 Know all men by these presents that I Otto Boehme unmarried of Omaha, Nebraska in consideration of ten thousand five hundred ($10,500) dollars in hand paid do hereby grant, bargain, sell convey and confirm unto R. C. Patterson of the same place and State the following-described real estate situate in the county of Douglas and State of Nebraska to wit:

The north half of the south half of the southwest quarter of the southwest quarter of section twenty (20) in township fifteen north of range thirteen (13) east of the sixth principal meridian containing ten acres more or less. Now known as Patterson and Dickson place subject to one mortgage of twenty-three hundred dollars and all taxes to date. Together with all the tenements, hereditaments and appurtenances to the same belonging and all the estate title and dower, claim or demand whatsoever of the said Otto Boehme of, in or to the same or any part thereto. To have and to hold the above-described premises with the appurtenances unto the said R. C. Patterson and to his heirs and assigns forever.

And I the said Otto Boehme for myself and my heirs executors and administrators do covenant with the said R. C. Patterson and with his heirs and assigns that I am lawfully seized of said premises that they are free from incumbrance that I have good right and lawful authority to sell the same and that I will and my heirs executors and administrators shall warrant and defend the same unto the said R. C. Patterson and his heirs and assigns forever against the lawful claims and demands of all persons whomsoever.

In witness whereof I have hereunto set my hand this 29th day of October, A. D. one thousand eight hundred and eighty-five.

OTTO BOEHME.

In presence of—

LUTHER DRAKE.

153 THE STATE OF NEBRASKA, } ss:
Douglas County, }

On the 29th day of Oct., A. D. 1885, before me, a notary public in and for the said county, personally came the above-named Otto Boehme (unmarried), who is personally known to me to be the identical person whose name is affixed to the above deed as grantor, and he acknowledged the instrument to be his voluntary act and deed.

Witness my hand and official seal the date aforesaid.

[Notarial Seal, Luther Drake, Douglas County, Nebraska.]

LUTHER DRAKE,
Notary Public.

Entered in numerical index and recorded Oct. 30th, 1885, at 10 o'clock a. m.

GUST. BENEKE,
County Clerk.

STATE OF NEBRASKA, } ss:
Douglas County, }

I, T. A. Megeath, register of deeds in and for said State and county, de hereby certify that I have compared the above and foregoing instrument as it appears on record in the office of said register of deeds, in Book 62 of Deeds, on page 429, and that the same is a full and correct copy thereof.

Witness my signature and seal, at Omaha, this 24th day of April, A. D. 1888.

[SEAL.] T. A. MEGEATH,
Register of Deeds.

EXHIBIT 00022, Apr. 28, '88. Chas. A. Potter.

13. Vacation of plat of addition to the city of Omaha, Neb., known as Patterson and Dickson place.

I, R. C. Patterson, being the sole owner in fee simple of the following-described real estate, viz:

The north ($\frac{1}{2}$) of south one-half ($\frac{1}{2}$) of southwest one-fourth ($\frac{1}{4}$) of southwest one-fourth ($\frac{1}{4}$) of section twenty (20), town. fifteen
154 (15) north, range thirteen (13) east, of the 6th P. M., situated in Douglas county, Nebraska, and known as Patterson and Dickson place, as surveyed, platted, and recorded at page 619, Book 60 of Deeds, there having been no lots or parts of said addition sold or transferred, *I* hereby declare plat of said addition vacated in compliance with section one hundred and eight (108), chapter fourteen (14), Compiled Statutes of the State of Nebraska.

R. C. PATTERSON.

STATE OF NEBRASKA, } ss:
Douglas County, }

On this 23rd day of February, A. D. 1886, before me, Luther Drake, a notary public in and for said Douglas county, Neb., personally came R. C. Patterson, to me personally known to be the identical person whose name is affixed to the above instrument, and acknowledged same to be his voluntary act.

[Notarial Seal, Luther Drake, Douglas County, Nebraska.]

LUTHER DRAKE,
Notary Public.

Entered in numerical index and recorded February 23d, A. D. 1886, at 2 o'clock p. m.

C. P. NEEDHAM,
County Clerk.

STATE OF NEBRASKA, } ss:
Douglas County, }

I, T. A. Megeath, register of deeds in and for said State and county, do hereby certify that I have compared the above and foregoing instrument as it appears on record in the office of said register of deeds, in Book 66 of Deeds, on page 367, and that the same is a full and correct copy thereof.

Witness my signature and seal this 24th day of April, A. D. 1888.

[SEAL.] T. A. MEGEATH,
Register of Deeds.

155 EXHIBIT 00023, April 28, '88. Chas. A. Potter.

Richard C. Patterson *et ux.* }
to } 24.
Jacob Fawcett. }

Know all men by these presents, that Richard C. Patterson and Marthe Belle Patterson, husband and wife in consideration of thirty-six hundred & no 100 dollars in hand paid so hereby grant, bargain sell, convey and confirm unto Jacob Fawcett the following-described real estate situate in the county of Douglas and State of Nebraska to wit: Lots number one (1) two (2) twenty-three (23) and twenty-four (24) block number one (1) East Side addition to the city of Omaha, as surveyed platted and recorded.

Together with all the tenements, hereditaments and appurtenances to the same belonging and all the estate, title, dower, claim or demand whatsoever of the said Richard C. Patterson and Martha Belle Patterson of, in or to the same or any part thereof.

To have and to hold the above-described premises with the appurtenances unto the said Jacob Fawcett and to his heirs and assigns forever and we the said Richard C. Patterson and Martha Belle Patterson for ourselves and our heirs, executors and administrators do

covenant with the said Jacob Fawcett and with his heirs and assigns that we are lawfully seized of said premises that they are free from incumbrance that we have good right and lawful authority to sell the same and that we will and our heirs executors and administrators shall warrant and defend the same unto the said Jacob Fawcett and his heirs and assigns forever against the lawful claims and demands of all persons whomsoever.

In witness whereof we have hereunto set our hands this 21st day of April, A. D. one thousand eight hundred and eighty-seven

RICHARD C. PATTERSON.
MARTHA BELLE PATTERSON.

In presence of—
CHAS. H. TOWNSEND.

156 THE STATE OF NEBRASKA, } ss:
Douglas County, }

On this 21st day of April, A. D. 1887, before me, a notary public in and for said county, personally came the above-named Richard C. Patterson and Martha Belle Patterson, who are personally known to me to be the identical persons whose names are affixed to the above deed as grantors, and they acknowledged the instrument to be their voluntary act and deed.

Witness my hand and official seal the date aforesaid.

[Notarial Seal, Judson W. Harris, Douglas County, Nebraska.]

JUDSON W. HARRIS,
Notary Public.

Entered in numerical index and recorded May 18th, A. D. 1887, at 10 o'clock a. m.

——— ———,
County Clerk.

STATE OF NEBRASKA, } ss:
Douglas County, }

I, T. A. Megeath, register of deeds in and for said State and county, do hereby certify that I have compared the above and foregoing instrument as it appears on record in the office of said register of deeds, in Book 92 of Deeds, on page 144, and that the same is a full and correct copy thereof.

Witness my signature and seal, at Omaha, this 27th day of April, A. D. 1888.

[SEAL.]

T. A. MEGEATH,
Register of Deeds.

Endorsed: Rich'd C. Patterson *et ux.* to Jacob Fawcett.

STATE OF NEBRASKA, } ss :
Douglas County, }

On this 23rd day of February, A. D. 1886, before me, Luther Drake, a notary public in and for said Douglas county, Neb., personally came R. C. Patterson, to me personally known to be the identical person whose name is affixed to the above instrument, and acknowledged same to be his voluntary act.

[Notarial Seal, Luther Drake, Douglas County, Nebraska.]

LUTHER DRAKE,
Notary Public.

Entered in numerical index and recorded February 23d, A. D. 1886, at 2 o'clock p. m.

C. P. NEEDHAM,
County Clerk.

STATE OF NEBRASKA, } ss :
Douglas County, }

I, T. A. Megeath, register of deeds in and for said State and county, do hereby certify that I have compared the above and foregoing instrument as it appears on record in the office of said register of deeds, in Book 66 of Deeds, on page 367, and that the same is a full and correct copy thereof.

Witness my signature and seal this 24th day of April, A. D. 1888.

[SEAL.]

T. A. MEGEATH,
Register of Deeds.

155 EXHIBIT 00023, April 28, '88. Chas. A. Potter.

Richard C. Patterson *et ux.*
to
Jacob Fawcett. } 24.

Know all men by these presents, that Richard C. Patterson and Marthe Belle Patterson, husband and wife in consideration of thirty-six hundred & no 100 dollars in hand paid so hereby grant, bargain sell, convey and confirm unto Jacob Fawcett the following-described real estate situate in the county of Douglas and State of Nebraska to wit: Lots number one (1) two (2) twenty-three (23) and twenty-four (24) block number one (1) East Side addition to the city of Omaha, as surveyed platted and recorded.

Together with all the tenements, hereditaments and appurtenances to the same belonging and all the estate, title, dower, claim or demand whatsoever of the said Richard C. Patterson and Martha Belle Patterson of, in or to the same or any part thereof.

To have and to hold the above-described premises with the appurtenances unto the said Jacob Fawcett and to his heirs and assigns forever and we the said Richard C. Patterson and Martha Belle Patterson for ourselves and our heirs, executors and administrators do

covenant with the said Jacob Fawcett and with his heirs and assigns that we are lawfully seized of said premises that they are free from incumbrance that we have good right and lawful authority to sell the same and that we will and our heirs executors and administrators shall warrant and defend the same unto the said Jacob Fawcett and his heirs and assigns forever against the lawful claims and demands of all persons whomsoever.

In witness whereof we have hereunto set our hands this 21st day of April, A. D. one thousand eight hundred and eighty-seven

RICHARD C. PATTERSON.
MARTHA BELLE PATTERSON.

In presence of—
CHAS. H. TOWNSEND.

156 THE STATE OF NEBRASKA, } ss:
Douglas County, }

On this 21st day of April, A. D. 1887, before me, a notary public in and for said county, personally came the above-named Richard C. Patterson and Martha Belle Patterson, who are personally known to me to be the identical persons whose names are affixed to the above deed as grantors, and they acknowledged the instrument to be their voluntary act and deed.

Witness my hand and official seal the date aforesaid.

[Notarial Seal, Judson W. Harris, Douglas County, Nebraska.]

JUDSON W. HARRIS,
Notary Public.

Entered in numerical index and recorded May 18th, A. D. 1887, at 10 o'clock a. m.

____ ____,
County Clerk.

STATE OF NEBRASKA, } ss:
Douglas County, }

I, T. A. Megeath, register of deeds in and for said State and county, do hereby certify that I have compared the above and foregoing instrument as it appears on record in the office of said register of deeds, in Book 92 of Deeds, on page 144, and that the same is a full and correct copy thereof.

Witness my signature and seal, at Omaha, this 27th day of April, A. D. 1888.

[SEAL.]

T. A. MEGEATH,
Register of Deeds.

Endorsed: Rich'd C. Patterson *et ux.* to Jacob Fawcett.

EXHIBIT 00024. April 28, '88. Chas. A. Potter.

Richard C. Patterson *et ux.* to William Pippin. } 25.

157 Know all men by these presents, that we Richard C. Patterson and Martha Belle his wife in consideration of nine hundred and no 100 ($900) dollars in hand paid do hereby grant, bargain, sell, convey and confirm unto William Pippin the following-described real estate situate in the county of Douglas and State of Nebraska to wit: Lot number three (3) block number one (1) East Side addition to Omaha, as surveyed platted and recorded.

Together with all the tenements hereditaments and appurtenances to the same belonging and all the estate title dower, claim or demand whatsoever of the said Richard C. Patterson and Martha Belle his wife, of, in or to the same or any part thereof.

To have and to hold the above-described premises with the appurtenances unto the said William Pippin and to his heirs and assigns forever. And we the said Richard C. Patterson and Martha Belle his wife for ourselves and our heirs executors, and administrators do covenant with the said William Rippin and with his heirs and assigns that we are lawfully seized of said premises that they are free from incumbrance that we have good right and lawful authority to sell the same and that we will and our heirs executors, and administrators shall warrant and defend the same unto the said William Rippin and his heirs and assigns forever against the lawful claims and demands of all persons whomsoever.

In witness whereof, we have hereunto set our hands this 1st day of May A. D. one thousand eight hundred and eighty-seven.

RICHARD C. PATTERSON.
MARTHA BELLE PATTERSON.

In presence of—
JUDSON W. HARRIS.

THE STATE OF NEBRASKA, } ss:
County of Douglas, }

On this 13th day of May, A. D. 1887, before me, a notary public in and for said county, personally came the above-named
158 Richard C. Patterson and Martha Belle, his wife, who are personally known to me to be the identical persons whose names are affixed to the above deed as grantors, and they acknowledged the instrument to be their voluntary act and deed.

Witness my hand and official seal the date aforesaid.

[Notarial Seal, Judson W. Harris, Douglas County, Nebraska.]

JUDSON W. HARRIS,
Notary Public.

Entered in numerical index and recorded May 18th, A. D. 1887, at 10 o'clock a. m.

____ ____,
County Clerk.

STATE OF NEBRASKA, } ss:
Douglas County, }

I, T. A. Megeath, register of deeds in and for said State and county, do hereby certify that I have compared the above and foregoing instrument as it appears on record in the office of said register of deeds, in Book 92 of Deeds, on page 145, and that the same is a full and correct copy thereof.

Witness my signature and seal, at Omaha, this 27th day of April, A. D. 1888.

[SEAL.] T. A. MEGEATH,
Register of Deeds.

(Endorsed:) Richard C. Patterson *et ux.* to William Rippin.

EXHIBIT 00025. Apr. 28, '88. Chas. A. Potter.

Richard C. Patterson *et ux.* }
to } 14.
Eugene W. Montgomery. }

Know all men by these presents that we Richard C. Patterson and Martha Belle his wife in consideration of eighteen hundred & no 100 ($1,800) dollars in hand paid do hereby grant, bargain, sell convey and confirm unto Eugene W. Montgomery the following, de-
159 scribed real estate situate in the county of Douglas and State of Nebraska to wit: Lots number four (4) and twenty-one (21) block number one (1) East Side addition to Omaha, as surveyed platted and recorded. Together with all the tenements and appurtenances to the same belonging and all the estate, title dower, claim or demand whatsoever of the said Richard C. Patterson and Martha Belle his wife, of in or to the same or any part thereof. To have and to hold the above-described premises with the appurtenances unto the said Eugene W. Montgomery and to his heirs and assigns forever And we the said Richard C. Patterson and Martha Belle his wife for ourselves and our heirs, executors and administrators do covenant with the said Eugene W. Montgomery and with his heirs and assigns that we are lawfully seized of said premises, that they are free from incumbrance that we have good right and lawful authority to sell the same and that we will and our heirs, executors and administrators shall warrant and defend the same unto the said Eugene W. Montgomery and his heirs and assigns forever against the lawful claims and demands of all persons whomsoever.

In witness whereof we have hereunto set our hands this first day of May A. D. one thousand eight hundred and eighty-seven.

RICHARD C. PATTERSON.
MARTHA BELLE PATTERSON.

In presence of—
JUDSON W. HARRIS.

THE STATE OF NEBRASKA, } ss:
Douglas County, }

On this 13th day of May, A. D. 1887, before me, a notary public in and for said county, personally came the above-named Richard C. Patterson and Martha Belle, his wife, who are personally known to me to be the identical persons whose names are affixed to the above deed as grantors, and they acknowledged the instrument to be their voluntary act and deed.

Witness my hand and official seal the date aforesaid.

160 [Notarial Seal, Judson W. Harris, Douglas County, Nebraska.]

JUDSON W. HARRIS,
Notary Public.

Entered in numerical index and recorded May 31st, A. D. 1887, at 10.45 o'clock a. m.

____ ____,
County Clerk.

STATE OF NEBRASKA, } ss:
Douglas County, }

I, T. A. Megeath, register of deeds in and for said State and county, do hereby certify that I have compared the above and foregoing instrument as it appears on record in the office of said register of deeds in Book 92 of Deeds, on page 264, and that the same is a full and correct copy thereof.

Witness my signature and seal, at Omaha, this 27th day of April, A. D. 1888.

[SEAL.] T. A. MEGEATH,
Register of Deeds.

Endorsed: Richard C. Patterson *et ux.* to Eugene W. Montgomery.

EXHIBIT 00026, Apr. 28, '88. Chas. A. Potter.

Richard C. Patterson *et ux.*
to
August J. Millhouse *et al.* } 34.

Know all men by these presents, that we Richard C. Patterson and Martha Belle husband and wife in consideration of nine hundred & no $\frac{}{100}$ ($900) dollars in hand paid do hereby grant, bargain, sell, convey, and confirm unto August J. Millhouse and Andrew Reifsteck the following-described real estate situate in the county of Douglas and State of Nebraska to wit: Lot number twenty-two (22) block number one (1) East Side addition to Omaha, as surveyed platted and recorded subject to taxes of 1887. Together with all the tenements, hereditaments and appurtenances to the
161 same belonging and *and* all the estate, title, dower claim or demand whatsoever of the said Richard C. Patterson &

Martha Belle husband and wife, of, in or to the same or any part thereof.

To have and to hold the above-described premises with the appurtenances unto the said August J. Millhouse and Andrew Reifstech and to their heirs and assigns forever. And we the said Richard C. Patterson and Martha Belle, husband and wife for ourselves and our heirs executors, and administrators *fo* covenant with the said August J. Millhouse and Andrew Reifstech and with their heirs and assigns that we are lawfully seized of said premises that they are free from incumbrance that we have good right and lawful authority to sell the same and that we will and our heirs, executors and administrators shall warrant and defend the same unto the said August J. Millhouse and Andrew Reifsteck and their heirs and assigns forever against the lawful claims and demands of all persons whomsoever

In witness whereof we have hereunto set our hands this 1st day of May A. D. one thousand eight hundred and eighty-seven.

RICHARD C. PATTERSON.
MARTHA BELLE PATTERSON.

In presence of—
JUDSON W. HARRIS.

THE STATE OF NEBRASKA, } ss :
Douglas County, }

On this 19th day of May, A. D. 1887, before me, a notary public in and for said county, personally came the above-named Richard C. Patterson and Martha Belle, husband and wife, who are personally known to me to be the identical persons whose names are affixed to the above deed as grantors, and acknowledged the instrument to be their voluntary act and deed.

Witness my hand and official seal the date aforesaid.

[Notarial Seal, Judson W. Harris, Douglas County, Nebraska.]

JUDSON W. HARRIS,
Notary Public.

162 Entered in numerical index and recorded July 7th, A. D. 1887, at 2.10 o'clock p. m.

C. P. NEEDHAM,
County Clerk.

STATE OF NEBRASKA, } ss :
Douglas County, }

I, T. A. Megeath, register of deeds in and for said State and county, do hereby certify that I have compared the above and foregoing instrument as it appears on record in the office of said register of deeds in Book 95 of Deeds, on page 265, and that the same is a full and correct copy thereof.

Witness my signature and seal, at Omaha, this 27th day of April, 1888.

[SEAL.] T. A. MEGEATH,
Register of Deeds.

Endorsed: Richard C. Patterson *et ux.* to Aug. J. Millhouse *et al.*

EXHIBIT 00027, Apr. 28, '88. Chas. A. Potter.

R. C. Patterson *et ux.* to Isaac Martin. } 22.

Know all men by these presents that we Richard C. Patterson and Martha Belle Patterson (husband and wife) in consideration of nineteen thousand four hundred and twenty-five dollars in hand paid do hereby grant, bargain, sell, convey and confirm unto Isaac Martin the following-described real estate situate in the county of Douglas and State of Nebraska to wit: Lots number five (5) to twenty (20) inclusive in block one (1) and lots numbered one (1) to twenty-six (26) in block two (2) in East Side addition as surveyed, platted and recorded, subject to taxes of 1887 and subject to an eight-hundred-dollar note which is a mortgage on the east five acres of this addition. Fifteen hundred dollars of the twenty-three hundred dollars mortgage having been paid to Omaha savings bank—
163 together with all the tenements hereditaments and appurtenances to the same belonging and all the estate, title, dower claim or demand whatsoever of the said Richard C. Patterson and wife of in or to the same or any part thereof to have and to hold the above-described premises with the appurtenances unto the said Isaac Martin and to his heirs and assigns forever and we the said Richard C. Patterson and wife for ourselves and our heirs executors and administrators do covenant with the said Isaac Martin and with his heirs and assigns that we are lawfully seized of said premises that they are free from incumbrance except as above mentioned that we have good right and lawful authority to sell the same and that we will and our heirs executors and administrators shall warrant and defend the same unto the said Isaac Martin and to his heirs and assigns forever against the lawful claims and demands of all persons whomsoever.

In witness whereof we have hereunto set our hands this 4th day of June, A. D. one thousand eight hundred and eighty-seven.

RICHARD C. PATTERSON.
MARTHA BELLE PATTERSON.

In presence of—
JOHN O. PATTERSON.

THE STATE OF NEBRASKA, *Douglas County,* } *ss:*

On this 4th day of June, A. D. 1887, before me, a notary public in and for said county, personally came the above-named Richard

C. Patterson and Martha Belle Patterson, who are personally known to me to be the identical persons whose names are affixed to the above deed as grantors, and they acknowledged the instrument to be their voluntary act and deed.

Witness my hand and official seal the date aforesaid.

[Notarial Seal, John O. Patterson, Douglas County, Nebraska.]

JOHN O. PATTERSON,
Notary Public.

Entered in numerical index and recorded August 18th,
164 A. D. 1887, at 4.45 o'clock p. m.

C. P. NEEDHAM,
County Clerk.

STATE OF NEBRASKA, } ss:
Douglas County, }

I, T. A. Megeath, register of deeds in and for said State and county, do hereby certify that I have compared the above and foregoing instrument as it appears on record in the office of said register of deeds in Book 98 of Deeds, on page 184, and that the same is a full and correct copy thereof.

Witness my signature and seal, at Omaha, this 24th day of April, A. D. 1888.

[SEAL.]

T. A. MEGEATH,
Register of Deeds.

EXHIBIT 00028, Apr. 28, '88. Chas. A. Potter

OMAHA, *March 2nd*, 1886.

Mr. Dickson, Kan. City:

MY DEAR SIR: Mr. R. C. Patterson has just sent me a note which I inclose so you can see why I write you. Last fall when I bought them 10 a. from Mr. Patterson I paid him $600 a acre, and for the 10 a. I paid him $6,000 and no more. The next day, after he gave me the deed and abstract, I went and asked him if he cared that I would change the amount in the deed to $10,000, so it would appear that I paid a big price and I might be able to sell it at a big profit. Mr. Paterson said he didn't care, as it made no difference to him how much I made it. After I bought it I felt I had paid all it was worth and wanted to get rid of it as soon as possible, as I found I could buy acres adjoining cheaper — as good. Only two weeks ago 5 acres sold at $500 a acre alongside of this I have and every bit as nice. From what dealings I have had with Mr. Pater-
165 son I can say he is honest and straight, and I believe bears that reputation. I wish now I had never got this land, as I could do better with my money.

Yours, &c.,

OTTO BOEHME.

Upon the back of said deposition appear endorsements in words and figures following, to wit: No. 57, M. Rec'd Aug. 17, 1888, and opened as per stipulation of parties Feb. 7, '89. E. D. Frank, clerk.

Thereupon, afterwards, to wit, on the 24th day of April, 1889, deposition was received and filed in said case; which said deposition is in words and figures following, to wit:

In the Circuit Court of the United States, District of Nebraska.

FRANK P. DICKSON, Complainant,
vs.
RICHARD C. PATTERSON *et al.*, Respondent. } In Equity. No. 57, Docket M.

You will please take notice that the above-named complainant desires the evidence to be adduced in said case to be taken orally under the sixty-seventh rule in equity of the Supreme Court as amended.

You will further take notice that by an order made in said cause by Chas. A. Potter, examiner in chancery of said court, the examination of witnesses on the part of said complainant will *be* take place before said examiner at his office, room 402, First National bank building, Omaha, Nebraska, on the sixth day of November, 1888, at 2 o'clock p. m., and proceed as the said examiner may direct, adjourning from day to day, if necessary.

J. M. WOOLWORTH,
OFFUTT & ENGLISH,
Solicitors for Complainant.

To John L. Webster, Esq., solicitor for respondents:

Ordered that the testimony of witness for complainants in
166 foregoing cause mentioned may be taken before me, at the place therein stated, on the 6th day of November, 1888, at 2 o'clock p. m.; such examination to proceed until completed, unless adjourned for cause.

It is further ordered that solicitors for resp'd'ts have one day's notice of examination.

C. A. POTTER,
Examiner in Chancery.

In the Circuit Court of the United States for the District of Nebraska.

FRANK P. DICKSON, Complainant,
vs.
RICHARD C. PATTERSON, Defendants.

Testimony Taken Before Chas. A. Potter, Examiner in Chancery of said Court, Tuesday, the 6th Day of November, A. D. 1888.

Pursuant to annexed notice and order.

Present: Offutt & English, solicitors for complainant, and John L. Webster, solicitor for respondent.

JOHN L. WEBSTER, a witness on behalf of the complainant, being first duly cautioned and sworn, was examined in chief by Mr. OFFUTT — deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.
Ans. —.

Q. Have you in your possession the original deed that is referred to in the pleadings in this case, which was executed by Patterson and Dickson and their respective wives to Otto H. Boehme for the land known as Patterson and Dickson's place at that time, or since known as East Side?

A. I have in my possession the deed which purports to be the deed described in the question.

Q. Is that the original deed, do you mean to say, or a copy of it?

A. It is the original, as I recollect it.

Q. From whom did you obtain possession of it?

A. The deed was brought to my office by Mr. Patterson
167 with other papers relating to this case.

Q. Will you produce that deed, in order that it may be filed and made a part of the record of this case?

A. I will send it to the examiner. It is now in my office.

The plaintiff offers the deed above referred to in evidence, and asks that the same may be identified and made a part of the record in this case. The deed is hereto attached, marked Exhibit "A."

The signature of this witness to this deposition is waived by both parties.

The taking of this deposition is adjourned, by agreement of parties, until to-morrow, at 5.15 p. m.

OTTO BOEHME, sworn for the plaintiff, examined in chief by Mr. OFFUTT, testified as follows:

Q. Referring to the deed executed by Patterson and Dickson and their respective wives to you for the property that has been spoken of in your deposition, did you deliver that deed to Patterson or Mr. Webster, the attorney of Mr. Patterson?

A. I delivered that to Mr. Patterson, if I remember right.

Q. Then you were mistaken in your previous testimony in stating you gave it to Mr. Webster?

A. I do not know. I do not remember whether I gave it to Mr. Patterson of Mr. Webster, but my recollection is that I gave it to Mr. Patterson.

Q. You have stated heretofore that you were connected with the Esmond hotel. How long have you been connected with that hotel?

A. I have been there since the 4th of February, 1888.

Q. Where did you live prior to that time, and for how long?

A. 1013 South 20th street, in Omaha, Douglas county, Nebraska.

168 Q. How long did you live there prior to your going to the Hotel Esmond?

A. I don't remember.
Q. About how long?
A. Possibly two years.
Q. Where did you live prior to the time that you lived at this place on 20th street?
A. 414 North 18th street, Omaha, Douglas county, Nebraska.
Q. How long did you live at that place?
A. I don't remember.
Q. About how long?
A. It might have been three or four years; I do not remember.
Q. How long have you lived in Omaha, all your life?
A. No, sir.
Q. About how long?
A. I have been here for the last eight or ten years.
Q. During the last four years, then, you were living at these two places up until you went to the Hotel Esmond. Is that correct?
A. That is correct.
Q. What business were you engaged in prior to the time that you went to the Hotel Esmond?
A. Nothing at all.
Q. How long had you been engaged in that prior to that?
A. I do not remember.
Q. Could you give us an idea of about how long?
A. No; I cannot give a very good idea of how long I was bumming. I might have been bumming three or four years; I do not remember, my memory is very poor.
Q. With whom did you live at this place on 20th street and 18th street?
A. With my mother.
169 Q. Are you married or single?
A. I am single.
Q. Are you one of the proprietors of the Hotel Esmond?
A. No, sir.
Q. Are you there on a salary?
A. Yes, sir.

The cross-examination of this witness is waived.
The signature of this witness is waived.

In the Circuit Court of the United States for the District of Nebraska.

FRANK P. DICKSON
vs.
RICHARD C. PATTERSON. } No. 57, M.

Mr. Offutt & English, attorneys for pl'ff, to Ellis L. Bierbower, U. S. marshal, Dr.

1888, Sept. 17.	To service	50
	" mileage	06
	" fees paid witness	1 60
		$2 16

Received Sept. 17th, 1888, of C. A. Potter ($2.16) the above amount in full.

E. L. BIERBOWER,
U. S. Marshall,
By C. W. LYON, *Deputy.*

Please remit by check or draft.
If not paid within — days, subject to sight draft.

Certificate.

UNITED STATES OF AMERICA, *District of Nebraska,* } *ss:*

I, Chas. A. Potter, examiner in chancery, duly appointed by the circuit court of the United States for the district of Nebraska, in the eighth circuit, do hereby certify that the — day ——, named in the deposition hereto annexed, I was attended at my office, named in this annexed notice, in the city of Omaha, by the counsel and witnesses aforesaid; that the said witnesses were duly sworn
170 and examined and the depositions were reduced to writing and read to the witness and by — subscribed in my presence.
Dated November 12, 1888.

C. A. POTTER,
Examiner in Chancery.

Fees.

Depositions, 15 folios, at 20 cents per folio	3 00
Swearing two witnesses, at 10 cents	20
One exhibit, at 10 cents each	10
Certificate	25
Subpœna and marshal's costs	2 66
	$6 21

EXHIBIT "A"

Warranty Deed.

R. C. Patterson & Co., real-estate agents and conveyance-s, Omaha, Nebraska. Houses, lots, farms, and business property for sale. Rents collected and taxes paid.

Know all men by these presents, that we Richard C. Patterson and Martha Belle (his wife), and Frank P. Dickson and Emily A. Dickson (his wife) in consideration of ten thousand ($10,000) dollars in hand paid, do hereby grant bargain, sell, convey and confirm unto Otto Boehme the following-described real estate, situate in the county of Douglas and State of Nebraska, to wit: The north half of the south half of the southwest quarter of the southwest quarter of section twenty (20) in township fifteen (15) north of range thirteen (13) east containing ten acres more or less according to the Government survey—now known as Patterson and Dickson place—subject

to one mortgage of twenty-three hundred dollars and all taxes of every kind.

Together with all the tenements, hereditaments and appurtenances to the same belonging, and all the estate, title, dower, claim or demand whatsoever of the said R. C. Patterson *et als.*, of, in, or to the same or any part thereof: To have and to hold the above-described premises, with the appurtenances unto the said Otto Boehme and to his heirs and assigns forever: And we the said R. C. Patterson *et al.*, for ourselves and our heirs, executors and
171 administrators, do covenant with the said Otto Boehme, and with his heirs and assigns that we are lawfully seized of said premises, that they are free from encumbrance, that we have good right and lawful authority to sell the same, and that we will and our heirs executors and administrators shall warrant and defend the same unto the said Otto Boehme and his heirs and assigns, forever against the lawful claims and demands of all persons whomsoever.

In witness whereof we have hereunto set our hands this 28th day of October, A. D. one thousand eight hundred and eighty-five.

RICHARD C. PATTERSON.
MARTHA BELLE PATTERSON.
FRANK P. DICKSON.
EMILY A. DICKSON.

In presence of—
ALFRED MILLARD.

THE STATE OF NEBRASKA, } ss:
Douglas County, }

On this 28th day of October, A. D. 1885, before me, a notary public in and for said county, personally came the above-named Richard C. Patterson and Martha Belle Patterson, who are personally known to me to be the identical persons whose names are affixed to the above deed as grantors, and they acknowledged the instrument to be their voluntary act and deed.

Witness my hand and official seal the date aforesaid.

[Notarial Seal, Alfred Millard, Douglas County, Nebraska.]

ALFRED MILLARD,
Notary Public.

Upon the back of said deed appear endorsements in words and figures following, to wit:

STATE OF MISSOURI, } ss:
County of Jackson, }

Be it remembered that Frank P. Dickson this 23rd day of October, A. D. 1885, before me personally appeared, and to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

172 In testimony whereof I have hereunto set my hand and affixed my official seal, at my office, in Kansas City, the day and year first above written.

My term of office as a notary public expires July 3d, 1889.

[SEAL.] WILLIAM D. CARLILE,
Notary Public.

STATE OF COLORADO, } *ss:*
County of El Paso, }

Be it remembered that Emily A. Dickson on this 27th day of October, A. D. 1885, before me personally appeared, and to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

In testimony whereof I have hereunto set my hand and affixed my official seal, at my office, in Colorado Springs, Colo., the day and year first above written.

My term of office as a notary public expires January 7, 1888.

[Notarial Seal, J. E. McIntyre, El Paso County, Colorado.]

J. E. McINTYRE,
Notary Public.

Warranty deed from R. C. Patterson and F. P. Dickson to Otto Boehme.

Entered in numerical index and received for record this 29 day of October, A. D. 1885, at 10.30 o'clock a. m., and recorded in Book 62 of Deeds, at page 396. Gust. Beneke, county clerk, Douglas county, Neb.

R. C. PATTERSON & CO.,
Real-Estate Agents and Conveyancers, Omaha, Neb.

Said depositions are endorsed as follows: Exhibit "A." No. 57, M. Rec'd & filed Apr. 24, '89, & opened by order of court May 13, '89. E. D. Frank, clerk.

Thereupon, afterwards, to wit, on the 6th day of May, 1889, depositions on behalf of defendant were received and filed in said case; which said depositions are in words and figures following, to wit:

173 *Notice.*

In the Circuit Court of the United States for the District of Nebraska.

FRANK P. DICKSON, Plaintiff,
vs.
RICHARD C. PATTERSON *et al.*, Defendant-. } Deposition *de bene esse.*

Please take notice that the deposition *de bene esse* of J. H. Patterson will be taken, to be read in evidence at the trial of said cause on the part of the defendants therein, before competent authority, at the office of S. Phillip Van Patten, N. P., 205 Oliver street, in Hot

Springs, in the county of Garland and State of Arkansas, commencing on the 2nd day of May, 1889, at the hour of 10 o'clock in the forenoon of said day, with authority to adjourn from day to day till all such depositions shall have been completed, at which time and place you are hereby notified to be present and put interrogatories to said witness, if you shall think fit.

The reason for taking the deposition is that said witness lives at a greater distance than one hundred miles from Omaha, Nebraska, the place of trial of this action.

Dated at Omaha, Neb., this 26th day of April, 1889.

J. L. WEBSTER,
Sol. for Def't.

These original interrogatories verified.

[SEAL.] S. P. VAN PATTEN,
Notary Public.

To Offutt & English, sol. for pl'ff.

Service of the above notice by receiving a copy thereof on this 26th day of April, 1889, is admitted.

OFFUTT & ENGLISH,
Sol'rs for Compl't.

NOTE.—Depositions *de bene esse* may be taken: 1st, when the witness lives at a greater distance from the place of trial than one hundred miles; 2nd, or is bound on a voyage to sea; 3d, or is about to go out of the United States; 4th, or out of the district in which the case is to be tried and is a greater distance than
174 one hundred miles from the place of trial before the time of trial; 5th, or that he is ancient or infirm. Rev. Stat. U. S., sec. 863.

Interrogatories propounded to James H. Patterson, a witness on the part of the defendant in the case of Frank P. Dickson *vs.* Richard C. Patterson, now pending in the circuit court of the United States for the district of Nebraska.

Int. 1. State your name, age, place of residence, and occupation.

Int. 2. State whether or not you were in the city of Omaha, Nebraska, on or about the 15th of April, 1885.

Int. 3. State whether or no you were in the office of R. C. Patterson, the defendant herein, on or about said date, when there was also present one A. R. Souer and R. C. Patterson, the defendant herein.

Int. 4. State whether or no any conversation took place relative to the purchasing of a ten-acre piece of land, situated in Douglas county, Nebraska, and now known as East Side addition to the city of Omaha, Neb.

These original interrogatories verified.

[SEAL.] S. P. VAN PATTEN,
Notary Public.

Int. 5. State what was said in said conversation relative to the purchasing of said 10-acre tract now known as East Side addi-
175 tion to Omaha.

Int. 6. You may state also what consideration, if any, was agreed upon to be paid by the said R. C. Patterson to said A. R. Souer.

Int. 7. You may state what part of said consideration, if any part thereof, was paid by said R. C. Patterson at said time upon said contract of purchase to the said A. B. Souer.

Int. 8. You may state whether or no you remember what amount of cash was to be paid upon the purchase price of said property.

[SEAL.]

Int. 9. You may state what interest you had at that time in the terms of said contract with reference to becoming a purchaser from R. C. Patterson, and how much cash, if any, you were to pay R. C. Patterson for an undivided half interest in said land and assume an undivided half of the incumbrance upon said property according to terms of purchase from A. B. Souer.

Int. 10. You may state whether or no you were in the city of Omaha, Neb., and present in the office of R. C. Patterson at the time that said 10-acre tract above referred to was sold to one Otto A. Boehme.

176 Int. 11. You may state the terms of said sale and the consideration to be paid for said ten-acre tract.

Int. 12. You may state whether or no any part of said consideration was paid at that time.

[SEAL.]

Int. 13. State whether or no you were present in the office of said R. C. Patterson about the last of October, 1885.

Int. 14. State whether or no the balance of the purchase-money was paid at said time by said Otto A. Boehme to said R. C. Patterson.

Int. 15. State whether or no you were present in the office of said R. C. Patterson in Omaha, Nebraska, at the time said East Side addition to the city of Omaha was sold to one Isaac Martin, said property being the above-mentioned 10-acre tract.

Int. 16. You may state fully the conversation which took place at said interview and the amount of the consideration there agreed upon.

[SEAL.]

177 Int. 17. State whether or no this interview took place in February, 1887.

Int. 18. State whether or no any cash was paid by said Martin at said time to bind the sale of said land.

Int. 19. State whether or no the said R. C. Patterson gave to said Martin a contract of sale wherein the terms of payment of the unpaid purchase price was provided for.

Int. 20. State whether or no this tract of land about which you

have been testifying is the same tract of land in litigation in the above-mentioned court between the said Dickson and said Patterson.

[SEAL.]

178 UNITED STATES OF AMERICA, STATE OF ARKANSAS, } ss:
County of Garland, City of Hot Springs, }

Depositions of witnesses taken on the second day of May, A. D. 1889, at the office of S. P. Van Patten, notary public in and for the county of Garland and State of Arkansas, at No. 205 Olive street, in the city of Hot Springs, in said city and State, taken in accordance with the notice which is attached to the front of these writings and made a part hereof, to be read as evidence in an action between Frank P. Dickson, plaintiff, and Richard C. Patterson *et al.*, defendants, pending in the circuit court of the United States for the district of Nebraska, taken on the part of the defendants upon the interrogatories hereto attached.

I certify that on this 2nd day of May, 1889, before me, S. P. Van Patten, notary public as aforesaid, at my office, in said city, county, and State, between the usual hours of business, was produced to and personally came before me J. H. Patterson, a witness in behalf of the defendants, to depose in a civil cause depending in the circuit court of the United States for the eastern district of Nebraska, wherein Frank P. Dickson is plaintiff and R. C. Patterson *et al.* are defendants, and whose testimony is alleged to be material in said civil cause in behalf of the defendants.

And the said J. H. Patterson, being of lawful age and sound mind and being by me first carefully examined and duly sworn to testify the whole truth and nothing but the truth touching the matters in controversy in said civil cause, deposes and says in answer to the interrogatories prefixed to these writings as aforesaid, as follows:

Answer to interrogatory 1st. In answer to the first interrogatory the witness says:

179 "My name is James H. Patterson; my age is twenty-nine years; my place of residence is Omaha, Nebraska, and my occupation is that of a capitalist."

In answer to the second interrogatory the witness says:

(Answer to Int. 2d.) "Yes, sir; I was in Omaha at that time."

In answer to the third interrogatory the witness says:

(Ans. to Int. 3d.) I was in the office of R. C. Patterson, the defendant herein, on or about said date, when there was also present in said office Messrs. A. R. Souer and R. C. Patterson, the defendant herein.

In answer to the fourth interrogatory the witness says:

(Ans. to Int. 4th.) "Yes, sir; there was a conversation between A. R. Souer and R. C. Patterson relative to the purchasing of said ten-acre tract."

In answer to the fifth interrogatory the witness says:

(Ans. to Int. 5th.) "I don't remember the exact conversation. I

simply remember of R. C. Patterson buying the said ten-acre tract of land from the said A. R. Souer, who said that he owned the land."

In answer to the sixth interrogatory the witness says:

(Ans. to Int. 6th.) "The consideration was forty-eight hundred dollars, of which the sum of twenty-five hundred dollars was to be cash and the balance on time. I don't remember anything about the time given."

In answer to the seventh interrogatory the witness says:

(Ans. to Int. 7th.) I have forgotten how much was paid at that time to Mr. Souer by Mr. R. C. Patterson, but I know that there was sufficient money paid to bind the bargain at that time.

In answer to the eighth interrogatory the witness says:

180 (Ans. to Int. 8th.) The amount of cash that was to be paid was twenty-five hundred dollars.

In answer to the ninth interrogatory the witness says:

(Ans. to Int. 9th.) "The understanding between R. C. Patterson and myself at that time was that I was to go in 'on the ground floor' and buy of him an undivided one-half interest in said land, and pay one-half the amount of the cash payment that he paid and assume one-half of the deferred payments."

In answer to the tenth interrogatory the witness says:

(Ans. to Int. 10th.) "Yes, sir. I had desk room in his office all along. I was there at the time the said land was sold to the said Otto A. Boehme.

In answer to the eleventh interrogatory the witness says:

(Ans. to Int. 11th.) "The said Otto A. Boehme was to pay six thousand dollars or six hundred dollars an acre for the said tract of land, and paid about three thousand cash."

In answer to the twelfth interrogatory the witness says:

(Ans. to Int'y 12th.) "There was from $300.00 to $500.00 paid at that time simply to bind the bargain."

In answer to the thirteenth interrogatory the witness says:

(Ans. to Intg. 13th.) "Yes, sir; I was."

In answer to the fourteenth interrogatory the witness says:

(Answer to Int'y 14th.) "Yes; the said Otto A. Boehme paid R. C. Patterson some money about that time; how much I have forgotten."

In answer to the fifteenth interrogatory the witness says:

(Ans. to Int. 15th.) Yes, sir; I was present in said office at the time that the said Isaac Martin bought said East Side addi-

181 tion, which was the said property above referred to.

In answer to the sixteenth interrogatory the witness says:

(Ans. to Int'y 16th.) I cannot relate all the conversation, but I know that the said R. C. Patterson sold during the winter of 1887 to one Martin the said "East Side addition," because he bought back from me a lot in that addition that he had sold to one I. N. Watson that I got from Watson in the way of a trade, so that he could let Martin have all of the addition, and I remember that Martin paid him about one hundred dollars more for the lot than he paid me.

In answer to the seventeenth interrogatory the witness says:

(Ans. to 17th Int'y.) "I think it did, and, in fact, I am sure that it was in February, 1887."

In answer to the eighteenth interrogatory the witness says:

(Ans. to Int. 18.) "Yes; Martin paid some cash at that time; how much I don't know, but about two thousand dollars."

In answer to the nineteenth interrogatory the witness says:

(Ans. to Int'y 19th.) "Yes, sir; the said Patterson gave the said Martin a land contract on the addition and Martin gave Patterso written authority to resell any of the lots, but not below a certa price."

In answer to the twentieth interrogatory the witness says:

(Ans. to Int. 20th.) "Yes, sir; it is."

Cross-interrogatories by GEO. G. LATTA, Esq., attorney for plaintiffs:

X question 1. When did you arrive in Hot Springs, Arkansas?

Ans. "Somewhere between the 1st and 5th of April; I should judge abouth the 5th."

182 X interrogatory 2d. When you came to Hot Springs, Arkansas, did you come here from Omaha, Nebraska?

Answer. "Yes, sir; I stopped there for one day. I had been in Dakota for thirty days before that."

Cross-interrogatory 3d. How long have you lived in Omaha and has that been your place of residence continuously during that time?

Answer. "I have lived there continuously going on four years. I was there often before I lived there, going there about every thirty or sixty days."

Cross-interrogatory. Were you aware of the institution of this suit in which you are now testifying before you left Omaha?

Answer. "Yes; the suit was begun a long time ago—about two years ago."

Cross-interrogatory. Are you acquainted with Richard C. Patterson and what is your relation to him?

Answer. "I am acquainted with him. We are brothers."

Cross-interrogatory. What business relation exist between you?

Answer. "We have had no business relation for the last year."

Cross-interrogatory. Do you know Abram Souer?

Answer. "I do."

Cross-interrogatory. What do you know about a real-estate transaction that was had with him by Richard C. Patterson in regard to some property that was formerly owned by Tukey and Keysor?

Answer. "During the month of April, 1885, Souer sold to Patterson a ten-acre tract of land for forty-eight hundred dollars."

Cross-interrogatory. At the time of the sale by Souer to Patterson was Souer the owner of the property?

Answer. "He so stated to Patterson."

Cross-interrogatory. Did he own it? Did he have a deed for it or how did he hold it?

Answer. "I don't know."

183 Cross-interrogatory. Did Souer ever say to your brother that he had an option on the property, and what did he say about that?

Answer. "I don't remember."

Cross-interrogatory. Do you know who made the deed to your brother and Dickson?

Answer. "No, sir."

Cross-int'y. Don't you know it to be a fact that Souer never had a deed to that property, and that he claimed only to have an option on it?

Answer. "I do not."

Cross-int. Did he ever state to your brother in your presence that he only had an option on the property?

Answer. "Not that I remember."

Cross-int'y. Did you ever see the option that Souer had on that property?

Answer. "No; I never saw any option that he had on it, if he had any."

Cross-int'y. Are you acquainted with Otto Boehme, and how long have you been acquainted with him?

Ans. "Yes, sir; I have been acquainted with him four or five years."

Cross-in'y. Were you present when the transaction in reference to the real estate in controversy was carried on between your brother and Boehme?

Answer. "Yes, sir."

Cross-int'y. What was the agreement in reference to the same?

Ans. "I can't remember the exact transaction, but it was very nearly a cash one."

Cross-int'y. Who was present when the trade was made?

Ans. "R. C. Patterson, Otto Boehme, and myself."

Cross-int'y. How much money was paid by Boehme to Patterson, and how was the payments made?

Answer. "I think about three thousand dollars was paid in cash."

184 Cross-int'y. Did you see the money counted?

Ans. "I was present when the money was paid, but did did not keep track of the count."

Cross-int'y. Is Boehme a man who keeps any bank account in Omaha?

Answer. "I don't know. I couldn't say. He is a German, and his business methods are queer."

Cross-int. Are you acquainted with Isaac Martin?

Answer. "I have seen him."

Cross-int'y. Where did you see him?

Answer. "In Omaha during the winter of 1887."

Cross-int'y. You will give a description of Isaac Martin—his size, his age, and personal appearance.

Answer. "He is a man of about 35, I should judge, and his weight about 175 or 180 pounds. He is a fine-looking man. I cannot describe him very closely."

Cross-int'y. Where did you see him?

Answer. "In the office of R. C. Patterson."

Cross-int'y. How often did you see him and how many days was Martin in the office?

Answer. "I don't remember."

Cross-inter'y. Did you see him there on two days, three days, four days, or five days, or how often?

Answer. "From one to four days—several times; say twice in one day."

Cross-interr'y. How long had Martin been acquainted with your brother?

Answer. "I don't know."

Cross-interr'y. Had your brother and Isaac Martin had dealings previous to this; and, of so, where at?

Answer. "Could not say."

Cross-interr'y:

—. Did Martin visit the property in controversy in this cause?

185 Answer. "He left the office for that purpose."

Cross-interr'y. Who was with him when he left?

Answer. "I don't remember W."

Cross-interr'y. Did you go with him at any time to see that land?

Answer. "I don't remember now that I did or did not."

Cross-interr'y. Were you at the office when the contract was made and entered into by Isaac Martin, and did you see the execution of the same?

Answer. "I saw the papers change hands. I was at the office and I saw the execution of the contract, but I did not see the face of the paper, I saw the signatures to the papers."

Cross-interr'y. Do you know who wrote the contract and how long it was written before the signature were put to it that you saw?

Ans. "I don't know who wrote the contract. I can't say how long it was written before it was signed."

Cross-interr'y. What are your initials?

Answer. "J. H. Patterson."

Cross-interr'y. Who is John O. Patterson?

Answer. "I decline to answer that question, for the reason that it is not proper cross-examination."

Cros-interr'y. Was John O. Patterson in the office of Richard C. Patterson at the time that Isaac Martin was trading for this land?

Answer. "I don't remember. He may have been."

Cross-interrogatory. Who is John O. Patterson?

Answer. "I decline to answer for the reason before stated."

Cross-int'y. Are you familiar with the handwriting of John O. Patterson?

Answer. "I decline to answer for the reasons before stated."

Cross-int'y. Was the contract which you saw and which you state was executed by Isaac Martin in the handwriting of John O. Patterson?

Answer. "I don't know."

186 Cross-int'y. You state that the contract was exchanged in your presence; that you saw the papers change hands, and that you saw the signatures to the papers. Now, sir, is it not a fact that the signature that you saw to that contract and that paper which purported to be the name of Isaac Martin was signed by John O. Patterson, and the name of Isaac Martin to that contract was written by and was in the handwriting of John O. Patterson?

Answer. "No, sir."

Cross-int'y. Are you as certain about all the other answers that you have made to previous interrogatories as you are to the answer to the last interrogatory?

Answer. "Yes, sir."

Cross-int'y. Have you filed with the notary taking this deposition all the papers you received from your brother in reference to this case? If not, what papers have you in your possession that you have not filed with him?

Answer. "I decline to answer; it is not a proper cross-examination."

Cross-interr'y. How long will you be at Hot Springs?

Answer. "I decline to answer; it is not a proper cross-examination."

Cross-interr'y. Are you familiar with the handwriting of John O. Patterson, and have you in your possession any of his writing that you will file herewith?

Answer. "I decline to answer; it is not proper cross-examination."

The further taking of depositions in this case is at this point adjourned over to Friday, May 3d, 1889, at 8 o'clock a. m., by mutual consent and for the reason that it is now past six o'clock p. m.

[SEAL.] S. P. VAN PATTEN,
Notary Public.

187 (*Deposition of J. H. Patterson, Continued.*)

The taking of depositions of witnesses in the case of Frank P. Dickson, plaintiff, *versus* R. C. Patterson *et al.*, defendants, pending in the circuit court of the United States for the district of Nebraska, taken on behalf of defendants in accordance with the notice attached hereto, and the caption to these writings is resumed at the same place and between the same hours on this, the 3rd day of May, 1889, pursuant to adjournment taken on May 2nd, 1889.

On the resuming of the taking of depositions this day, the witness, J. H. Patterson, requests that his objections be noted to the cross-interrogatories and answers thereto on all matters not mentioned or introduced in the direct examination.

There being no further questions propounded or testimony offered on behalf of either plaintiff or defendant the taking of depositions in this case is now closed.

J. H. PATTERSON.

The plaintiff, by his attorney, Geo. H. Latta, Esq., enters a general objection to the deposition of J. H. Patterson, based on the re-

fusal of the witness to answer questions propounded on cross-examination.

[SEAL.] S. P. VAN PATTEN,
Notary Public.

I further certify that the foregoing deposition of J. H. Patterson was then and there reduced to writing by me in the presence of the deponent and by him subscribed in my presence after having been so reduced to writing. I further certify that the reason for taking said depositions was and is, and the fact was and is, that the deponent is sojoi-ning with his family at the city of Hot Springs, Arkansas, more than one hundred miles from Omaha, Nebraska, where the said civil cause is appointed by law to be tried. I further certify that I am not of counsel nor attorney to either
188 of the parties to this suit, nor interested in the event of this cause. I further certify that, it being impracticable for me to deliver said deposition with my own hand into the court for which it was taken, I have retained the same for the purpose of being sealed up by me and speedily transmitted by the United States mail to the said court for which it was taken.

I further certify that the fee for taking said deposition, amounting to five dollars, has been paid to me by the witness, J. H. Patterson, who is one of the defendants in the case, and that the same is just and reasonable for the services performed.

There was present at the examination only the witness, J. H. Patterson, and the attorney for plaintiff, J. G. Latta, Esq.

Given under my hand and seal, at the city of Hot Springs, State of Arkansas, this 3d day of May, 1889.

S. P. VAN PATTEN,
[SEAL.] *Notary Public.*

Fees, $5.00, paid by def't.

Upon the back of said deposition appear endorsements in words and figures following, to wit: No. 57, M. Rec'd & filed May 6, 1889, & opened by order of court May 13, 1889. E. D. Frank, clerk.

Thereupon, afterwards, to wit, on the 14th day of May, 1889, deposition on behalf of complainant was received and filed in said case; which said deposition is in words and figures following, to wit:

Notice.

In the Circuit Court of the United States for the District of Nebraska.

FRANK P. DICKSON, Plaintiff,
vs.
RICHARD C. PATTERSON *et al.*, Defendants. } Deposition *de bene esse.*

Please take notice that the deposition *de bene esse* of Charles C. Hilton and Copeland Townsend will be taken to be read in evidence

at the trial of said cause on the part of the plaintiff therein,
189 before competent authority, at the law office of McClellan, Cummins & Moulton, in the First National Bank building, in the city of Chicago, in the county of Cook and State of Illinois, commencing on the 11th day of May, 1889, at the hour of 10 o'clock in the forenoon of said day, with authority to adjourn from day to day till all such depositions shall have been completed; at which time and place you are hereby notified to be present and put interrogatories to said witnesses if you shall think fit.

The reason for taking the deposition is that said witnesses live at a greater distance than one hundred miles from Omaha, Nebraska, the place of trial of this action.

Dated, at Omaha, Neb., this 6th day of May, 1889.

CHAS. OFFUTT,
Solicitor for Plaintiff.

To John L. Webster, solicitor for defendants.

CHICAGO, *May 11th*, 1889.

It is hereby agreed that above depositions may be taken at the Palmer house, at 2 p. m., May 11th, 1889.

On margin: Service of this notice *notice* by receiving a copy thereof on this 6th day of May, 1889.

JNO. L. WEBSTER,
Solicitor for Defendants.

190 Deposition of witness taken before me, Simeon W. King, United States commissioner in and for the northern district of Illinois, residing at the city of Chicago, county of Cook and State aforesaid, on the 11th day of May, in the year 1889, at the hour of two o'clock in the afternoon, at the Palmer house, in the city of Chicago, county of Cook and State of Illinois, pursuant to the annexed notice and stipulation herein set out, to be read in evidence in behalf of the plaintiff in an action pending in the circuit court of the United States for the district of Nebraska, in which Frank P. Dickson is plaintiff and Richard C. Patterson *et al.* are defendants, it being first stipulated and agreed by and between Richard C. Patterson, appearing for the defendants, and F. I. Moulton, appearing for the plaintiff, that this said deposition might be taken at the Palmer house, at two o'clock in the afternoon of May 11th, 1889.

COPELAND TOWNSEND, of lawful age, being by me first duly examined, cautioned, and solemnly sworn, as hereinafter certified, deposeth and saith as follows, to wit:

Q. State your name and occupation.
A. Copeland Townsend: manager of the Palmer house.
Q. How long have you been manager, Mr. Townsend?
A. Since the 1st day of July, 1888.

Q. What was your business during the period of time from January 17th, 1887, to June 4th, 1887?

A. Room clerk at the Palmer house.

Q. State, if you know, whether Mr. Isaac Martin was a guest of the Palmer house from February 17th, 1887, to June 4th, 1887.

A. He was not.

Q. Was he at any time during that period?

A. He was not.

191 Cross-examination by Mr. PATTERSON:

Q. Mr. Townsend, could there be a guest stopping at this house without your knowledge?

A. No; not if I have access to the books or unless he registered under an assumed name.

Q. Do you know whether Isaac Martin ever stopped at the Palmer house or whether he was ever in the Palmer house?

A. I do not.

Q. He might have been here between February 17th and June 4th, 1887, a hundred times and you not know it?

A. He could not have been unless he registered at this hotel under an assumed name—that is, I mean as a guest occupying a room. He may have been here and had a meal and paid for it at the cashier'- desk, but he could hardly be considered a guest under those circumstances.

Q. Well, he may have been here, then, any number of times and taken a meal without your personal knowledge?

A. Yes, sir.

Q. Mr. Townsend, is it not customary for business men who are travelling over the country from the east to the west and from the west to the east to meet their friends in business frequently at the Palmer house in Chicago and talk over matters of business?

A. Yes, sir.

Q. That you know is a very common and customary thing to occur?

Objected to as irrelevant and immaterial.

A. I do.

Q. Isaac Martin might have negotiated the purchase of the sale of a hundred thousand dollars' worth of goods or property in the Palmer house, of Chicago, and you not know anything of it?

Objected to as irrelevant and immaterial.

A. Yes, sir.

192 Q. Do you know Isaac Martin, of Chicago?

Objected to as irrelevant and immaterial.

A. I do not.

Q. Do you know whether there is any such name as Isaac Martin on the official directory of Chicago?

(Objected to as irrelevant and immaterial.)

A. I do not.

Q. There may be more than one Isaac Martin and you not know it?

(Objected to as irrelevant and immaterial.)

A. Yes, sir.

Q. Then you do not know Isaac Martin, of 269 West Monroe street?

(Objected to as irrelevant and immaterial.)

A. I do not.

Q. How many hotels are there in Chicago, Mr. Townsend, to your knowledge?

(Objected to as irrelevant and immaterial.)

A. I cannot tell you; do not know how many there are.

Q. About how many?

(Objected to as irrelevant and immaterial.)

A. Oh, I should think a hundred.

Q. Is it not customary, to your knowledge, for men to stop at other hotels as guests in Chicago and to meet in the Palmer house by arrangement and adjust their business affairs?

(Objected to as irrelevant and immaterial.)

A. I believe it is done often.

Q. Don't you know that it is done?

(Objected to as irrelevant and immaterial.)

A. Yes; I do know that it is done.

Q. The Palmer house is the leading hotel of Chicago, is it not?

(Objected to as irrelevant and immaterial.)

A. It is.

Q. So, then, Isaac Martin might have been here a thousand
193 times a year and done business and you would not have known it?

(Objected to as irrelevant and immaterial.)

A. Yes, sir.

Redirect examination by Mr. MOULTON:

Q. You have stated in answer to a cross-interrogatory that you do not know whether Mr. Isaac Martin was at the Palmer house during the period from February 17th, 1887, to June 4th, 1887. By that you mean you do not know whether he was in the building itself, do you not?

A. Yes; that is what I mean.

Recross-examination by Mr. PATTERSON:

Q. You state, Mr. Townsend, that you have been manager of the Palmer house since the 1st of July, 1888.

(Objected to as irrelevant and immaterial.)

A. Yes, sir.

Q. In what capacity did you act in the Palmer house previous to that date—July 1st, 1888?

(Objected to as irrelevant an immaterial.)

A. For a number of years I was room clerk of the Palmer house.

Q. Then you would not have personal knowledge of a guest boarding at the Palmer house whilest you would have personal knowledge of a guest rooming at the Palmer house?

(Objected to as irrelevant and immaterial.)

A. There is no distinction between a roomer at the Palmer house and a boarder, as far as my knowledge is concerned. I have personal knowledge, if I have access to the books, since the 1st of July, 1888, as to whether a person is a guest at the house or not.

Q. Then since the 1st of July, 1888, to your knowledge, Mr. Martin has not been here?

(Objected to as irrelevant and immaterial.)

194 A. I have made no examination of the books from that time. From the 1st of July, 1888, I can only have knowledge of a guest at the house by an examination of the books.

Q. Do you know of Isaac Martin stopped here in the fall of 1887, say during the months of August or September?

(Objected to as irrelevant and immaterial.)

A. I cannot tell.

Q. He may have done so?

(Objected to as irrelevant and immaterial.)

A. He may have been here; yes, sir.

COPELAND TOWNSEND.

Subscribed and sworn to before me by the said Copeland Townsend this 11th day of May, A. D. 1889.

[SEAL.] SIMEON W. KING,
United States Commissioner in & for the Northern District of Illinois.

NORTHERN DISTRICT OF ILLINOIS:

STATE OF ILLINOIS, } ss:
City of Chicago, }

I, Simeon W. King, United States commissioner in and for the northern district of Illinois, residing at the city of Chicago, county of Cook and State aforesaid, do hereby certify that Copeland Townsend was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that his deposition, subscribed as above set forth, was reduced to writing by Lizzie F. Morgan, who is not interested in the suit, in my presence and in the presence of the

witness and was subscribed by the said witness in my presence and was taken at the time and place in the annexed notice and stipulation herein set out; that I am not counsel, attorney, or relative of either party or otherwise interested in the event of this suit, and the said deposition was commenced at the time in said agreement specified, as above set forth.

195 In testimony whereof I have hereunto set my hand and official seal this 11th day of May, A. D. 1889.

[SEAL.] SIMEON W. KING,
United States Commissioner in and for the Northern District of Illinois, Residing at Chicago and District Aforesaid.

Commissioner's fees	$5 00
Reporter's fee	2 20
	$7 50

Paid by Mr. Knoulton, att'y for pl'ff.

S. W. KING,
Commissioner.

Upon the back of said deposition appear endorsements in words and figures following, to wit: No. 57, M. Rec'd & filed May 14, '89, & opened by order of court May 15, 1889. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 21st day of May, 1889, depositions were received and filed in said case; which said depositions are in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

FRANK P. DICKSON, Complainant, *vs.* RICHARD C. PATTERSON *et al.*, Defendants. } 57, Docket M. In Chancery.

Testimony taken before Chas. A. Potter, examiner in chancery of said court, Saturday, the 18th day of May, A. D. 1889.

Pursuant to annexed notice and order.

Present: Chas. Offutt, sol'r for complainant; John L. Webster, sol'r for respondent.

WILLIAM W. KEYSOR, a witness on behalf of the complainant being first duly cautioned and sworn, was examined in chief by Mr OFFUTT — deposes and says as follows:

Q. Are you the same W. W. Keysor who heretofore gave your deposition-in-chief in this case?

A. Yes, sir.

196 Q. Referring to the sale of land in controversy to R. C. Patterson, state whether or not, at the time that you first saw Mr. Patterson and knew that he was the party proposing to buy, any terms had been agreed upon for the price of the property as between Mr. Souer and Mr. Patterson.

A. No; I do not think any had been agreed upon.

Q. How came you to see Mr. Patterson and have any conversation with him in regard to the matter?

A. I met Mr. Sauer—I think it was on the street the first time I knew anything about that he had a customer—and he told me that he had——

Objected to this witness saying anything that Mr. Sauer said as secondary testimony and not rebuttal.

The WITNESS: Mr. Sauer told me that he had a customer for the land. I think it was a day or two afterwards I met him again and asked him how the trade was getting on, and he said: I had just as soon tell you who is getting the land as not; it is Mr. Patterson, and he wants some discount in the price and I think I will send him right to you and you can make your own bargain with him; and it was after that I first saw Mr. Patterson about the land and had some talk with him, but I do not remember where the conversation was or at what place.

The defendant moves to strike out all of the answer of the witness in relation to Mr. Sauer as inadmissable and incompetent.

Q. How long was it from that time until the trade was finally agreed upon?

A. I think about two weeks; it might have been a little longer.

Q. What was the cause of the delay?

A. There were two causes: One was that Mr. Tukey and myself held the land under a contract originally from J. S. Collins
197 and Mr. Collins objected to making a deed directly to us, and there was some delay on that account; he was advised that Byron Reed—and another cause was that in our chain of title one of the grantors, I think, had made a deed without his wife's signature, and there was a question of dower interest came up, and, I think, Mr. Patterson wanted some time to investigate that matter and get advice on it, and also Mr. Tukey and myself wanted some time to satisfy ourselves about it before we warranted title.

The defendant moves to strike out the foregoing answer as not rebuttal, irrelevant, and immaterial.

Q. Then did Mr. Patterson make objection to the title pending negotiations with you and Mr. Tukey?

A. Yes, sir.

Q. Do you know whether or not Mr. Patterson took any counsel from attorneys in regard to the question of title pending these negotiations?

A. I think he did.

Q. How was that matter about the title finally arranged?

A. It was arranged in this way: Mr. Patterson finally agreed that he would take the land for taxes and I would give him a sort of collateral agreement or contract on our part that we would protect him from any loss or damage arising out of any dower claim that might be successfully raised against us.

Q. Did you give such an agreement?

A. Yes, sir.

Q. To whom was it given, and in whose name was it made?

A. My remembrance is that we delivered the agreement to Mr. Patterson about the time that we gave him the deed; I think the agreement was with him.

Q. Did Mr. Patterson agree to take the land without that agreement?

A. That was one of the conditions of the sale, that we were
198 to give him such an agreement in writing, which we did.

Q. Tell as near as you can what the contents of that agreement was.

Objected to as incompetent, irrelevant, and immaterial and not rebuttal.

A. The contents of the agreement was that we were to be personally liable to him for any loss or damage that might occur to him or his heirs and assigns on account of any power interest arising against the land.

Q. Have you a copy of that agreement?

A. No, sir.

Q. Was it delivered to Mr. Patterson?

A. Yes sir.

Q. And by whom signed?

A. Mr. Tukey and myself.

Q. Do you know whether any abstract of this property was furnished to Mr. Patterson or not pending the trade?

A. I do not remember positive, but I think not.

Q. How was the fact about this possible claim of dower made known to Mr. Patterson?

A. I do not remember that; I think that he raised the question first.

Q. Patterson did?

A. I think so now.

Q. Did Mr. Sauer have any written or verbal option upon this property?

A. No; not from me he did not; he did not have it from either of us.

Q. Did you have any conversation with Mr. Patterson about the time of this trade or near thereto, either before or afterwards, in regard to this payment of commission on this sale to Mr. Patterson?

Objected to as not rebuttal.

199 A. Yes; I had some conversation with him.

Q. State what it was.

A. I do not remember just how it arose. I met Mr. Patterson about the time or shortly after the trade was completed, and he said that he was going to settle with Mr. Sauer and expected to get a considerable discount on the commissions. He thought he was going to settle for half commissions or something to that effect. I remember the remarks. I remember the conversation from the fact that Mr.

Tukey and myself had been very positive that as to the agreement that Mr. Patterson was to settle with Mr. Sauer himself for the commissions that we were to have the net price.

Q. Was anything said in that conversation or at any other conversation about that time by Mr. Patterson to you with regard to the price for which this property sold?

Objected to as having already been testified to heretofore.

A. Nothing was said any more than that the price we were to get for it was $3,300.00.

Q. About it being cheaper, did he make any inquiry about that?

A. Yes; shortly after the trade was completed he asked me why we sold it so cheap. Mr. Patterson did. He said it was a good piece of property. I explained to him why it was; that Mr. Tukey and I wanted the cash that we were getting out of it to use in the purchase of other property.

The cross-examination of this witness is waived.

The signature of this witness to this deposition is waived by both parties.

A. P. TUKEY, being first duly sworn, examined in chief by Mr. OFFUTT, testified as follows:

200 Q. Are you the same A. P. Turkey who testified in chief in this case some time last year?

A. Yes, sir.

Q. At the time that you first learned that Mr. Patterson desired the land in controversy, please state whether or not he and Mr. Sauer had agreed upon the price, or whether negotiations continued pending as between Mr. Patterson on one side and yourself and Mr. Keysor on the other with a view of arriving at the price.

—. The first I knew of Mr. Patterson the trade had not been closed; we closed it with Mr. Patterson afterwards.

Q. How was it that you learned that Mr. Patterson desired to get the property?

A. I expect that Mr. Keysor told me; I think so.

Q. Do you know how long negotiations were pending between yourself and Mr. Keysor on one side and Mr. Patterson on the other?

A. I would think 2 or 3 weeks; some little time.

Q. Was there any difference between you in the price during that time?

A. Yes, there was.

Q. What was that difference?

A. I can hardly tell what price we asked for that property; there were so many of those delays, but my remembrance is that Mr. Patterson, some little time, did not come to our terms, and then after he did there was a hitch as to this title question, and I know that there was a little delay as to our getting the deed from Mr. Collins, and it all came in. I cannot state just what caused the whole amount of delay or how long we were doing it.

Q. Was there any objection made on account of this title that you spoke of?

A. There was towards the last of it.

Q. Who made that objection?

201 A. Mr. Patterson.

Q. To whom did he make it?

A. He asked that Mr. Keysor and I should straighten it out.

Q. How was it arranged finally?

A. We consented personally to identify him against any loss.

Q. What did you do with the obligation?

A. Gave it to Mr. Patterson.

Q. Did anybody else sign it except yourself and Mr. Keysor?

A. No, sir.

Q. Have you any copy of it?

A. No, sir.

The cross-examination of this witness is waived.

The signature of this witness is waived by both parties.

RICHARD C. PATTERSON, the defendant, examined in chief by Mr. OFFUTT, testified as follows:

Q. You have heard the testimony of Mr. Keysor in regard to the agreement that was given to you, signed by them at the time of the execution of the deed to you for the land in controversy?

A. Yes, sir.

Q. Will you state whether or not that agreement is in your possession?

A. I received notice about thirty minutes ago to produce such an agreement, and immediately I went to search for it through all of the papers where I supposed or thought the agreement might be to find it, but up to the present time I have been unable to find it anywhere about my papers in my office.

Q. Then was there such an agreement delivered to you by them?

A. There was.

Q. Will you continue to search and report whether or not you have been able to find it?

A. I will.

202 The cross-examination of this witness is waived.

The signature of this witness is waived by both parties.

Certificate.

UNITED STATES OF AMERICA, *District of Nebraska,* } *ss:*

I, Chas. A. Potter, examiner in chancery, duly appointed by the circuit court of the United States for the district of Nebraska, in the eighth circuit, do hereby certify that — the — day of ——, named in the depositions hereto annexed, I was attended at the office of Chas. Offutt, in the city of Omaha, by the counsel and witnesses aforesaid; that the said witnesses were duly sworn and examined, and

the depositions were reduced to writing and read to the witnesses. The signing of said depositions was waived by the parties, and were taken by agreement of parties, all notice and formalities waived.

Dated May 20th, 1889.

C. A. POTTER,
Examiner in Chancery.

Fees.

Depositions, 30 folios, at 20 cents per folio	$6 00
Swearing 3 witnesses, at 10 cents	30
Certificate	25
	$6 55

Two witness'- fees, $3.20.
Marshal's costs, —.

Upon the back of said deposition- appear endorsements in words and figures following, to wit: No. 57, M. Rec'd May 21, 1889, and opened by order of court Nov. 6th, '89. E. D. Frank, clerk.

Thereupon, afterwards, to wit, on the 24th day of May, 1889, depositions were filed in said case; which said depositions are in words and figures following, to wit:

203 In the Circuit Court of the United States for she District of Nebraska.

FRANK P. DICKSON, Plaintiff,
vs.
RICHARD C. PATTERSON *et al.*, Defendants.

Testimony taken in behalf of the defendant Richard C. Patterson before Hattie Duncan, a notary public in and for the county of Douglas, State of Nebraska, commencing on this the 5th day of February, A. D. 1889, by consent of parties.

Present: Charles Offutt, solicitor for plaintiff, and John L. Webster, solicitor for defendant R. C. Patterson.

R. C. PATTERSON, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, deposes and says as follows:

Q. You may state your name, age, and residence.
A. Richard C. Patterson; age, thirty-four; residence, Omaha.
Q. Are you the defendant in this suit?
A. Yes.
Q. Are you acquainted with the plaintiff, Mr. Dickson?
A. Yes.
Q. Do you know of the land purchased by yourself and Dickson from Mr. Turkey, the title of which is involved in this suit?
A. I do.

Q. Have you in your possession the original deed from Tykey and Keysor to yourself and Dickson?
A. I have.
Q. Who drafted that deed?
A. W. W. Keysor.
Q. Are you familiar with Mr. Keysor's handwriting?
A. I am.

Q. I now call your attention to the original deed referred
204 to by you. You may state in whose handwriting the body of that deed is.

A. It is in the handwriting of W. W. Keysor, one of the grantors of the deed.

Defendant Patterson offers in evidence the original deed from Tukey & Keysor to Patterson and Dickson and asks that the notary shall take and attach a copy thereof to this deposition, to be marked Exhibit "A."

Q. Through whom did you negotiate for the purchase of this property described in this deed?
A. I purchased the property from A. R. Souer.
Q. What was his business at that time?
A. Real estate.
Q. What had he to do with this property?
A. He offered it to me for sale as his own.

Plaintiff objects to the latter part of the statement as to how it was offered to witness as immaterial, irrelevant, and incompetent, and for the further reason that it undertakes to state what is only a conclusion of the witness.

Q. Through whom did you negotiate, touching the amount of the purchase-money to be paid by you for this property?
A. A. R. Souer.
Q. State what was the amount of the purchase-money paid by you for the purchase of this land—for yourself and for Frank P. Dickson.
A. $4,800.
Q. To whom or through whom was that money paid?
A. It was paid to Mr. Souer and Mr. Tukey, I believe.
Q. You may state how this money came to be paid to Mr. Souer and Mr. Tukey.
A. After I purchased the property of Souer for $4,800 I learned that Souer only had an option on the property; that the title
205 was in the name of Mr. Collins, and that Tukey & Keysor held a contract from Collins for the property, and that Mr. Sour held an option from Tukey & Keysor.

Plaintiff objects to witness stating what he learned through other parties as hearsay.

Q. If the title was in Collins, state what led up to the making of this deed to you by Tukey & Keysor instead of the deed being made by Collins.

A. As I remember now, refreshing my memory from the abstract, Mr. Collins made a deed to Tykey & Keysor, and then Tukey & Keysor made a deed to R. C Patterson and Frank P. Dickson.

Q. Then was any part of the purchase-money paid direct by you to Collins?

A. No, sir.

Q. What portion of the purchase-money went to Souer and what part to Tukey & Keysor?

A. $1,000 was paid to Tukey & Keysor and $1,500 to Souer, making $2,500, which was the cash payment.

Q. How was the remainder of the $4,800 paid?

A. As I remember now, it was made in one, two, and three years on or before —; $700 the first year, as I remember, and $800 the second year and $800 the third year.

Q. Were these notes and mortgage for the deferred payment the same notes and mortgage which were testified to by Mr. Tukey in behalf of the plaintiff?

A. Yes; as I remember, they were.

Q. You may state whether or not afterwards you made a sale of this property to Mr. Bohme.

A. I did.

Q. Was that the same Bohme who was called as a witness by the plaintiff?

A. Yes; the same one.

206 You may state the amount for which that sale to Bohme was made.

A. The amount for which I sold the ten acres to Bohme was $6,000.

Q. I observe by the deed to Bohme, introduced in evidence by the plaintiff, the consideration is named as $10,000. Explain how it came to be so.

A. That is true. After the deed had been made and signed by all parties Mr. Bohme came to me and requested that I should change the word six, which stood before thousand or thousands and put in the word "ten" in order to make the consideration $10,000. As a reason for so doing, he said he wanted it to appear that he had paid that price for the property, so he could get more for it when he came to sell it. I made this change from six to ten thousand without having received one dollar of consideration therefor.

Q. At the time of the sale of this property to Bohme for the $6,000 named, were you then familiar with the market value of this property?

A. I was.

Q. At that time how long had you been engaged in buying and selling real estate in the city of Omaha?

A. Just about two years.

Q. How much of your time during these two years had you devoted exclusively to the real-estate business?

A. I had given my entire time to that business for that period.

Q. What, in your opinion, was the then market value of this property?

A. At that time I would not have given any more than $500 an acre myself had I been buying it at the time I sold it to Bohme, as I could have bought other property just as good, and in my opinion better, lying adjacent within 100 or 200 feet of this property,
207 for $500 an acre.

Q. Did you hear the testimony of John T. Bell and of other witnesses called on behalf of the plaintiff to the effect that this property at that date had a very much enhanced expectant value on account of the location of the Belt Line railway?

A. Yes.

Q. What have you to say touching such prospective enhanced valuation to this property at that time?

A. The time to which Mr. Bell and others referred respecting the value of property in this locality by reason of the expected location of the Belt Line railroad was on or about or a little after the first of November, and the time I negotiated the sale of this property to Bohme was along in the first part of October, of the fall of 1885, and there was no prospect or any talk of any railroad being located at that time that I knew of.

Q. Well, what was the actual effect upon the value of this property at the time when the deed was actually made to Bohme? Was there any enhancement of the value beyond the $500 per acre stated by you as its then value?

A. Not at the time the deed was executed and delivered; there was no enhancement that I knew of.

Q. Are you familiar with the present value of that property?

A. I am.

Q. What would you say was its present value?

Plaintiff objects to the question as irrelevant, immaterial, and incompetent.

A. I would not give to-day $400 an acre.

Plaintiff ocjects to the answer as not responsive to the question.

Q. You may state what, in your opinion as a real-estate man, is its present fair market value?

Plaintiff objects to the question as immaterial, incompe-
208 tent, and irrelevant.

A. I should say $500 an acre would be the fair market value.

Q. You may state what were the terms and conditions of that sale to Bohme.

A. As I remember now, he was to pay $3,000 in cash, $700 on or before six months, and to assume $2,300 in notes with a mortgage which was on the property at that time.

Q. What was done by way of carrying that agreement into execution? And if not carried into complete execution touching the payment of the purchase-money you may state why.

A. Bohme paid me, as I remember, between $400 and $500 cash on the purchase of this property along about the middle of October;

then he had due him from me for the sale of lots, as an agent, in the neighborhood of $300, as I remember, and the balance of the $3,000 he paid me in cash about a week, I should say, before the deed was ready for delivery. The deed had to be sent to Kansas City or Colorado, I don't remember which, for the signature of Mr. and Mrs. Dickson, and it took it about a week to be returned, I think. I don't remember distinctly about that, how long or what time it took exactly; I know it had to be sent away.

Q. Was or was not this the purchase-money from Bohme for which you accounted to Dickson, and referred to in the letters and correspondence testified to by Mr. Dickson, the plaintiff, and shown by him by letters introduced in evidence?

A. It was.

Q. After the same was made to Bohme did you at any time repurchase the property from Bohme; and, if so, under what circumstances?

A. I think it was on the morning or the day before, possibly, of the return of the deed after having been signed by Mr. and Mrs. Dickson that Mr. P. C. Hinebaugh sent word to me, through
209 his partner, Mr. Taylor, of the firm of Hinebaugh & Taylor, that the Missouri Pacific R. R. had located their line across what was then known as the Hurlbut truck garden property, which was immediately west of Patterson's subdivision and adjacent thereto, and that I should take note of this and buy all the property I could in that vicinity or near by, and to raise the price on that which I did own, as it was a sure thing the railroad was going there; that they had bought of John T. Bell and Mr. Hurlbut 20 acres adjoining Patterson's subdivision on the west, about one-fourth of a mile from this ten acres now in litigation, and that the railroad company had paid Mr. Bell and Hurlbut $400 an acre for the 20 acres, and that they were to locate the depot on this ground or near by, and for the reason that this information came from such a reliable source, as I considered Mr. Hinebaugh to be; knowing he was more or less interested with railroad men and their plans I went immediately that day and offered to purchase back the property from Bohme, and I succeeded that day of the day following in purchasing back the same ten acres which I sold him for the consideration of $6,500.

The statement of what word was sent by Mr. Hinebaugh or anybody else with reference to this matter is objected to as hearsay and immaterial and incompetent.

Q. Mr. Bohme then made you a conveyance by deed of this property, did he not?

A. He did.

Q. Did you subsequently make a sale of this property to one Martin, who is made defendant in the amended bill?

Plaintiff objects to the question on the ground that it is immaterial, irrelevant, and incompetent.

A. Yes.

Q. You may state the history of that sale by you to Martin.

210 A. I sold this ten acres as an addition to one Martin on or about February of 1887.

Q. Was the original contract of sale to Martin in writing?

A. Yes.

Q. Will you produce that contract?

Plaintiff objects for reason last above given.

A. Here is the original contract of sale of the entire property to Martin.

Defendant Patterson offers the contract in evidence and asks that a copy thereof be attached to this deposition, marked Exhibit "B."

Plaintiff objects.

Defendant Patterson offers in evidence the deed from Bohme to Patterson and asks that a copy thereof be attached to this deposition, marked Exhibit "C."

Q. I observe the purchase price of the sale to Martin to be $23,125. Was that the true amount of the consideration and did or did not include any other property aside from the property sold by you and Dickson to Bohme?

Plaintiff objects to the question on the ground that it is immaterial, irrelevant, and incompetent.

A. It was the property entire, the entire ten acres as an addition at that time.

Q. You may state whether or not the $23,125 named in the contract as the consideration was or was not the true amount.

A. Yes.

Same objection as last above made.

Q. Subsequent to that contract with Martin did or did you not make a deed to Martin for this property?

Plaintiff objects for the reasons last above stated.

A. Yes.

211 Defendant Patterson offers in evidence this deed from Patterson to Martin and ask- that a copy thereof be attached to this deposition, marked Exhibit "D."

Plaintiff objects — immaterial, irrelevant, and incompetent.

Q. I show you a letter bearing date February 27, 1886, signed by Dickson; a letter dated March 15, 1886, signed by Dickson; a letter dated May 12, 1886, signed by Dickson, and a postal card dated May 18, signed by Dickson; a letter dated September 4, 1886, signed by Dickson; a letter dated September 14, 1886, signed by Dickson, and ask you to state whether these letters and the signatures thereto are in the handwriting of the plaintiff, Frank P. Dickson.

A. Yes; they are.

Q. And were these letters received by you in the due course of mail in your correspondence with the plaintiff, F. P. Dickson?
A. Yes; they were.

Defendant Patterson offers these letters in evidence, to be numbered consecutively 1, 2, 3, 4, 5, & 6, and ask that copies thereof be attached to this deposition as Exhibit "E."

Q. Did the plaintiff Dickson do anything prior to the commencement of this suit by way of tendering back to you or offering to refund to you any part of the money which you had paid him on account of the sale made by Dickson and Patterson to Bohme?

Plaintiff objects to the question as immaterial, irrelevant, and incompetent.

A. He did not do anything.
Q. Has he ever done anything by way of tendering back to you any part of the money?

Plaintiff objects to the question as immaterial, incompetent, and irrelevant.

A. No, sir; never; but, on the contrary, has demanded from me a little balance due on the sale of this property to Bohme as long as four or five months after he found out what he claimed or
212 thought to be fraudulent.
Q. Why was not this balance of $112 and some cents referred to in the letters produced in evidence, numbered from one to six consecutively, not paid to him by you?

Plaintiff objects to the question as incompetent, immaterial, and irrelevant.

A. Because it was not paid to me by Bohme, as I remember.
Q. Was there any other controversy touching any claim which you had against Dickson on account of other transactions?

Plaintiff objects to the question as immaterial, incompetent, and irrelevant.

A. Yes.
Q. Is there or is there not a suit now pending in which you are the plaintiff and Dickson the defendant in the district court in and for Douglas county, State of Nebraska, to recover moneys on another independent transaction?

Plaintiff objecys to the question as immaterial, incompetent, and irrelevant.

A. Yes; there is a suit now pending against Dickson.

Defendant's solicitor here gives notice that on the hearing he will produce the original of the deeds and papers offered in evidence herein.

Cross-examination by Mr. OFFUTT:

Q. You have said that you live in Omaha. How long have you resided here, please?

A. I have resided here since July, 1883.

Q. What business are you engaged in at the present time?

A. I am president of the Mechanics' & Traders' bank.

Q. Have you any other business?

A. I have no other business at the present in which I am particularly engaged; I sell real estate when I have an opportunity.

213 Q. How long had you been in the real-estate business and when did you quit that as a business?

A. I entered in the real-estate business in October, 1883, the 1st day of October, 1883, and continued regularly and exclusively in it until I organized the Mechanics' & Traders' bank, in the month of February, 1888.

Q. What had you been doing prior to the time you entered the real-estate business?

A. I was in the law office of Judge Savage.

Q. How long were you there?

A. I was there from about the 20th of July until the 1st day of October, 1883.

Q. Have you ever been admitted to the bar?

A. No, sir; I never have applied for admission.

Q. What were you engaged in prior to the time you were in the law office of Judge Savage?

A. I was a student in the University of Pennsylvania; the law department of the University of Pennsylvania, at Philadelphia.

Q. How long were you there?

A. I believe I was there about a year.

Q. Now, I would like to know what you were at prior to that time?

A. Prior to that I was engaged under the direction of a presiding elder in the M. E. Church.

Q. In what capacity were you engaged?

A. In looking after a church, the interests of a church, as a local minister.

Q. At what point and how long were you engaged as a local minister?

A. At Delaware, Water Gap, Pennsylvania, and, as I remember, about a year.

Q. You had studied for the ministry prior to that, had you?

214 A. No; not in particular. I had taken a regular collegiate classical course in college, and the only thing I ever did that you might say I was studying for the ministry was to study Hebrew; that I did for one year—my senior year in college.

Q. You did some preaching, I suppose, during this time?

A. No; I don't remember that I did.

Q. Did you do any exhorting?

A. No.

Q. No talks, then, at all?

A. I don't think I took any active part during my college course that I remember of.

Q. My question is not confined to the time you were at college, but to the time you were connected with the church.

A. If that is the case, I did not understand you. While I was connected with this church I did some talking, lecturing, and exhorting.

Q. You came, then, from Pennsylvania directly to Omaha, did you?

A. Yes.

Q. Are you a natice of Pennsylvania?

A. Yes.

Q. In what portion of the State did you live?

A. Well, I was born in Huntingdon county, Pa.

Q. What other portions of the State did you live in?

A. I lived in that county until I was 16 or 17 years of age, at which time I left home to attend school.

Q. After you came to Omaha and went into the real-estate business you dealt in real estate very extensively, did you not?

A. I believe I was considered one of the extensive dealers in real estate.

Q. Did you keep a set of books and bank account in reference to the real-estate transactions and deals that you made?

215 A. I never kept any book, except a book in which property was listed for sale, as I remember.

Q. You were making large purchases and sales on your own account, were you not, as well as for other persons?

A. No, sir; my sales were mostly commission sales—outside lots.

Q. You were not purchasing, then, largely for yourself?

A. No, sir; not at that time.

Q. My question does not refer to any -articular time. What I speak of is the time during which you were in the real-estate business in Omaha. Were you not extensively purchasing and selling on your own account and making additions to the city as well?

A. Yes; I suppose you might say it was extensive for one man.

Q. Did you not during this time make several additions to the city of outside property, platted them, and sold the lots on time and contracts?

A. Yes.

Q. That was your business, was it not, almost exclusively during a large portion of this time?

A. Quite so.

Q. Amounting to many thousands of dollars each month, did it not?

A. No, sir; I don't remember. I am sorry to say that it did.

Q. Well, now, with regard to the sales and purchases of real estate that you made on your own account, did you keep any book with reference to these matters?

A. No, sir.

Q. Did you keep a bank account of the payment of money and of the receipt of money by you?

A. I kept a small bank account. I kept a good portion of my money, when I had any, at that time at the beginning, in my safe or in my pocket.

Q. You say you begun in 1883, did you?

A. Yes.

216 Q. What should you say was the amount of your purchases of real estate during the year 1883?

A. I don't remember that I purchased anything.

Q. In 1884 what would you say was the amount of your purchases?

A. I don't remember.

Q. Can't you approximate the amount?

A. I purchased Patterson's subdivision of 13 acres, as I remember, in the months of July, 1884.

Q. My question was not directed to what particular tract you purchased. It was about what was the amount of the property you purchased, how much the expenditure was, the contract price.

A. I should say $10,000; I don't remember exactly.

Q. Could you state how much your purchases were in 1885?

A. I don't know; perhaps $250,000 in 1885.

Q. How much were they in 1886?

A. I don't remember. I am only guessing at these amounts. In 1886 I don't remember how it did run.

Q. You could not give an opinion in regard to that, could you?

A. It might have been $150,000; it might have been less and it might have been more.

Q. About what was it in 1887?

A. The purchases?

Q. Yes.

A. I don't remember; not so much, perhaps.

Q. Now, about what were your sales in each of these years?

A. I haven't the least idea.

Q. Were they more or less than the amount of the purchases?

A. I should judge more.

Q. Much more or a little more?

A. I should say they were much more.

Q. Were your sales in large tracts or small portion, generally?

217 A. I don't remember; they were both.

Q. Were they frequently or of daily occurrence?

A. Yes.

Q. I understand, then, that you were one of the largest dealers—real-estate dealers—in the city of Omaha during the period named?

A. I don't know what others may have considered me in that respect.

Q. I asked you for your own opinion.

A. I don't know what constitutes a large dealer; some men do millions of dollars' worth of business in a year and some others don't do much.

Q. My question is directed to the city of Omaha. Were you not

generally acquainted with the nature and extent of the business done by real-estate men in the city of Omaha?

A. No, sir; I don't know what others did.

Q. You had no general information or knowledge in regard to that. Do I understand you correctly?

A. All the general information I had was what I got from the transfers in the daily papers.

Q. You don't know, then, whether you were one of the largest dealers or not and have no opinion on the subject?

A. No, sir.

Q. And you can't give any opinion now; is that the fact?

A. I don't know what you would constitute a large dealer.

Q. Then that is the reason you can't answer the question, is it?

A. I did what I considered a good business; was fully satisfied with my business.

Q. Had you prior to the purchase of this land known as East Side addition, which was deeded by Tukey & Keysor to Patterson and Dickson, purchased any other land in that same locality in the city or near the city of Omaha?

218 A. Yes.

Q. About how much and how near to this had you owned other land prior to this purchase in that locality?

A. I should judge about 50 acres.

Q. How long had you owned that prior to the purchase of this land from Tukey & Keysor?

A. I had owned some of it about a year.

Q. State how much and which you had owned for about year.

A. I don't remember how much, but I owned some of it as much as a year before this was purchased from Tukey & Keysor.

Q. Well, how much of it?

A. Possibly 15 acres.

Q. You say possibly; can't you tell how much you owned?

A. No; I don't remember.

Q. Well, state as near as you can.

A. I purchased land along during the year at different times.

Q. Well, we have 15 acres; now as to the remainder.

A. I purchased an interest, an undivided half interest, in 18 acres, as I remember, with Mr. Himebaugh along during that year; I don't remember the exact time.

Q. My question applies to all purchases prior to this one in controversy.

A. Yes; prior.

Q. Well, now, was there any others?

A. I purchased acre lots in the vicinity west of this property.

Q. West would be further out from the center of Omaha, would it not?

A. Yes.

Q. How near was this 50 acres you speak of situated to the tract known as East Side addition and now in controversy?

219 A. Some of it was only about 300 feet from the west end

and of this property in controversy and other lands which I had purchased was much as one-fourth of a mile.

Q. East, west, north, or south?

A. West; some of it perhaps more than a fourth of a mile.

Q. Was any of it more than half a mile?

A. Yes.

Q. What proportion was less than one-fourth of a mile.

A. Patterson's subdivision was less than one-fourth of a mile.

Q. How much was there in Patterson's subdivision?

A. I believe there were 13 acres.

Q. Was there any other?

A. Not within a radius of less than one-fourth of a mile?

Q. All of it was near to it, was it not?

A. No.

Q. Well, how near was the further-st from this East Side addition?

A. I should say a good half mile.

Q. You were then one of the most extensive dealers in land situated in this particular locality that there was in the city, were you not?

A. I suppose that I was.

Q. You took occasion, did you not, to investigate and make purchases in that locality, and was not that the reason how you came to find out about this tract in controversy?

A. I don't remember how I found it out; it was offered to me by Mr. Souer for sale.

Q. I will repeat the former part of my question, as to whether or not you *has* taken occasion to investigate and ascertain who were the owners of property in that particular locality?

A. No, sir.

Q. You were not interested or interesting yourself in the
220 question as to who were the owners of other land in this locality?

A. Not in particular.

Q. You had no desire then to extend your possessions in this locality?

A. Yes; I had; in anything that I thought was worth the money.

Q. About when was it called to your attention that the land in controversy was for sale?

A. It was some time in the month of April—in the spring of 1885.

Q. Can you state about what time in the month of April?

A. No; I don't remember the exact time.

Q. Can you tell the circumstances in detail under which it was called to your attention—how it came about?

A. As I remember, Mr. Souer was in my real-estate office and we got to talking about lands in the locality of Patterson's subdivision, and it was then that he said that he owned ten acres there which he had for sale.

Q. Who was present at this time?

A. I think one of my clerks and my brother was present at that time.

Q. Name the parties present, please.

A. As I remember, Mr. Starr was the name of the gentleman present.

Q. Well, give his first name, if you please.

A. I don't know his first name now.

Q. Where does he live?

A. In Omaha—at least, he did the last time I saw him. I have not seen him for about a year.

Q. Who else was present?

A. One or two of my brothers were possibly in the office.

Q. You say possibly. Can't you say whether either of your brothers was present? And, if so, which, and give the name of the brother present.

221 A. J. H. Patterson, my brother, was present, and I think Rudolph was present. It has been so long that I don't remember exactly.

Q. That was the first you knew of this land being for sale?

A. Yes.

Q. Was anything done with regard to it that day?

A. I don't believe there was.

Q. Was the price named?

A. I think it was.

Q. How much was it?

A. $5,000 was the price asked.

Q. When was the price changed to $4,800?

A. The day I agreed with Mr. Souer to purchase it.

Q. When was that?

A. It was along about ten days or two weeks afterwards.

Q. Was any one present at that time, and where was that?

A. In my office.

Q. He came in there to make the sale to you?

A. Yes.

Q. In the meantime had you looked at the land at all?

A. In the meantime Mr. Souer has showed me the land as I remember.

Q. Had you seen any person in regard to purchasing the land before you and Souer agreed upon what you should pay for the land?

A. No, sir.

Q. Did you at that time know A. P. Tukey?

A. Not before the purchase was made.

Q. My question is not limited as to whether or not you were on intimate terms with him or personally acquainted with him, but did you know him when you saw him?

A. I do not know him.

Q. Did you know Mr. Keysor by sight?

A. Yes; I knew Mr. Keysor.

222 Q. Did you know Mr. Collins, the man of whom you have spoken as holding the legal title?

A. No, sir.

Q. What Collins was it?

A. One of Collins Brothers now engaged in the saddlery business—C. H. & J. S. Collins.

Q. There is only one man there, is there not?

A. I supposed C. H. & J. S. Collins were brothers.

Q. Was it J. S. Collins?

A. I believe so.

Q. Did you know him when you saw him?

A. No, sir.

Q. Did you ever make any investigation prior to the consummation of the agreement between yourself and Souer as to who was the owner of this property?

A. No, sir.

Q. You made no inquiry of any kind or caused any to be made; is that the fact?

A. Yes, sir.

Q. You depended exclusively upon Souer's representations to you that he was the owner of the property?

A. Yes, sir.

Q. When did you, or did you ever at any time, converse either with Mr. Tukey or Mr. Keysor in regard to the sale of this property?

A. I went to see Mr. Tukey after I had paid $100 cash upon the purchase of the property to Souer, and it was then that I was informed that Tukey was the real owner of the property.

Q. When did you pay the $100 down to Souer?

A. I should say ten days, possibly, after he called my attention to it, but I don't remember exactly.

Q. Then you can't give the exact date, either from recol-
223 lection or from reference to some book or memorandum that you have in connection with your business transaction at that time?

A. I have no memorandum of it, and I don't remember how long it was after my attention was called to the property that I paid Souer this $100 to bind the bargain.

Q. You took a writing from him, did you not?

A. I don't think I did.

Q. Do you mean to say that no writing passed between yourself and Mr. Souer at all?

A. No, sir; not that I remember of.

Q. When did the first writing ever pass from you to any person in regard to this property?

A. The first writing that passed from me was a mortgage and three notes for $2,300 to Tukey & Keysor.

Q. Then the first writing that passed at all was the execution of the deed from Tukey & Keysor to you for the land in question?

A. As I remember, it was.

Q. How long was that after the time that you say you paid the $100 to Souer to bind the bargain?

A. How long was what? I don't understand you.

Q. You don't understand what?

him any writing to indicate the payment and without having seen the option that he said he had upon the property, or without having made any inquiry or investigation to ascertain whether
227 anybody else had any interest in it, or in whom the title was?

A. Yes; at that time I did not ask who was the owner. All I wanted was to get possessio*j* of the property. Business was done on faith and credit a good deal then.

Q. Speaking of the possession of the property, it was an open, vacant piece of ground, was it not? There was no building or improvements on it?

A. No, sir.

Q. You took no possession until after you got the deed?

A. No, sir.

Q. Now, when you saw Tukey & Keysor—you say, as you remember, you think you saw them a few days after the payment of the money to Souer—didn't you discuss the price that should be paid for this land with them?

A. Yes; I tried to get them to take less for their interest in it.

Q. What did you say to them in that regard?

A. I asked them if they could take any less than $3,300 for their interest.

Q. Didn't they first price the land to you? Didn't you go to them and get the price on the land at $3,800?

A. No, sir.

Q. What was the price they first stated to you?

A. It was $3,300.

Q. When did you ascertain that they were the owners of the property?

A. I heard before I went to see them that they had a contract on it from Collins.

Q. And then you went to see them?

A. Yes.

Q. And asked them what they asked for the land. What did you say to them?

228 A. I asked them if they would take any less than $3,300 for their interest.

Q. How did you know that they asked $3,300 when you went *yo* see them?

A. Mr. Souer acquainted me with the facts in the case.

Q. What did he acquaint you with?

A. That he owed Tukey $3,300, and the difference was coming to him.

Q. The difference was coming to him—Souer?

A. Yes.

Q. And yet, while you knew that Souer was seeking to make this profit of $1,500 out of you, you never called for an exhibition of the paper under which he claimed an option on the property?

A. No.

Q. You never suspected all this time that Souer was simply selling the land as an agent of Tykey & Keysor?

A. I don't know that he was.

Q. Have you no other answer to make to my question?

A. I don't know that he was.

Q. During this negotiation of sale you did not suspect that Souer was selling the land as the agent for Tukey & Keysor?

A. If I had suspected anything of the kind should not have bought it from Souer.

Q. Then you did not suspect it; is that the fact?

A. Yes.

Q. You bought it from Souer in ignorance of anything of the kind; is that the fact?

A. Yes; that is the fact.

Q. Yet at that time you were thoroughly acquainted with real-estate dealers and methods of business men and real-estate agents in this city, were you not?

A. No, sir; not thoroughly.

229 Q. You knew from your observation and reading, limited as it was, as a lawyer, in order to make a binding contract for the sale of real estate that it was necessary to have some writing to evidence the transaction in case the possession was not given?

A. Not when witnesses were present.

Q. You did not think it was necessary?

A. I did not consider it necessary.

Q. You certainly knew that no interest could be sold unless the party had some interest to sell?

A. Yes; I would naturally suppose that.

Q. We come now to the deed from Tukey & Keysor to yourself. At the time this deed was made how much money did you say was paid in cash?

A. There was $2,500 to be paid in cash on the $4,000.

Q. Did anybody ask Mr. Keysor to put the consideration $4,800 when he drafted the deed, as you said he did?

A. I do not know that there was.

Q. How came he to put the consideration $4,800 if he had stated to you that he would take $3,300 for it?

A. As I remember, he knew that I was paying $4,800 for it.

Q. Why do you say that he knew that you were paying $4,800 for this property?

A. Why, it seems to me that we had a talk about it when I went to see about the title.

Q. Explain to us why it seems to you that you and Mr. Keysor had a talk about this.

A. I may have gone to Keysor——

Q. I am not asking you for what you may have done, but for what actually took place between yourself and Mr. Keysor.

A. I don't remember exactly; it is so long now; I may have requested him to make the consideration just what I was paying for the property.

230 Q. Do you state it to be a fact that Keysor or Tukey or either of them then knew that you were paying $4,800 for the property before the deed passed from them to you?

A. I don't know that he was.

Q. Have you no other answer to make to my question?

A. I don't know that he was.

Q. During this negotiation of sale you did not suspect that Souer was selling the land as the agent for Tukey & Keysor?

A. If I had suspected anything of the kind should not have bought it from Souer.

Q. Then you did not suspect it; is that the fact?

A. Yes.

Q. You bought it from Souer in ignorance of anything of the kind; is that the fact?

A. Yes; that is the fact.

Q. Yet at that time you were thoroughly acquainted with real-estate dealers and methods of business men and real-estate agents in this city, were you not?

A. No, sir; not thoroughly.

229 Q. You knew from your observation and reading, limited as it was, as a lawyer, in order to make a binding contract for the sale of real estate that it was necessary to have some writing to evidence the transaction in case the possession was not given?

A. Not when witnesses were present.

Q. You did not think it was necessary?

A. I did not consider it necessary.

Q. You certainly knew that no interest could be sold unless the party had some interest to sell?

A. Yes; I would naturally suppose that.

Q. We come now to the deed from Tukey & Keysor to yourself. At the time this deed was made how much money did you say was paid in cash?

A. There was $2,500 to be paid in cash on the $4,000.

Q. Did anybody ask Mr. Keysor to put the consideration $4,800 when he drafted the deed, as you said he did?

A. I do not know that there was.

Q. How came he to put the consideration $4,800 if he had stated to you that he would take $3,300 for it?

A. As I remember, he knew that I was paying $4,800 for it.

Q. Why do you say that he knew that you were paying $4,800 for this property?

A. Why, it seems to me that we had a talk about it when I went to see about the title.

Q. Explain to us why it seems to you that you and Mr. Keysor had a talk about this.

A. I may have gone to Keysor——

Q. I am not asking you for what you may have done, but for what actually took place between yourself and Mr. Keysor.

A. I don't remember exactly; it is so long now; I may have requested him to make the consideration just what I was paying for the property.

230 Q. Do you state it to be a fact that Keysor or Tukey or either of them then knew that you were paying $4,800 for the property before the deed passed from them to you?

A. I don't remember exactly about it.

Q. You said a few moments ago that they did. Is that the case now?

A. It runs in my mind that they did know.

Q. You can't say as a matter of fact that they did know?

A. No, sir.

Q. How came he to put $4,800 in the deed if he was only to get $3,300?

A. Simply to save a transfer through Souer.

Q. The deed would have been all right without stating the consideration as you demonstrated in the transfer to Bohme?

A. It would have been all right.

Q. What was the necessity of putting $4,800 in the deed from Tukey & Keysor and how came Mr. Keysor to put it in?

A. Deeds have never been made for less than the actual amount, but on the contrary have frequently been made for a great deal more than was paid.

Q. Now, did not you yourself ask Mr. Keysor to say nothing about it, but that you would like to have the consideration put in as $4,800 in order to facilitate you in making the transfer, or some words to that effect?

A. I never asked Mr. Keysor to do anything of the kind for the reason mentioned in the question.

Q. Well, leave out the reason mentioned in the question, I ask you whether you asked either Mr. Tukey or Mr. Keysor to put the consideration in the deed when it was drafted at $4,800.

A. I would not say I did or did not.

Q. Did you ask either of the gentlemen named not to say anything about the fact that you asked them to make this in-
231 crease in the consideration over what they got?

A. I don't remember whether I asked Mr. Keysor to make the consideration $4,800 or not.

Q. That is not what I asked you.

A. As I remember, I may have stated that I was paying $4,800 for this property and they would please put the consideration in the deed accordingly. I don't remember whether I asked Mr. Tukey or Mr. Keysor. I know Mr. Keysor drew the deed, because it is in his handwriting.

Q. I ask you the same question again. Did you ask either Mr. Tukey or Mr. Keysor not to say anything about the fact that you wanted the consideration stated $4,800 rather than what they were to get?

A. No, sir.

Q. You did not ask either of them to keep the matter a secret as to that fact?

A. Not as I remember now; don't remember the facts in the case—those little details.

Q. On the day that you made the payment to Tukey & Keysor I understood you to say that $1,000 was paid in cash. Am I correct in that?

A. I think I only paid $900 on that day—the day of the transfer

of the papers. It is my impression that the $100 I gave Souer he gave Tukey or that I gave Tukey $100 at some time before that. I don't remember which.

Q. You say you gave Tukey $100 at some time?

A. It is my impression that Tykey & Keysor had $100 paid to them before I paid the balance.

Q. Did you pay then this $100 or did Souer pay it to them?

A. As I said before, I can't recollect whether I paid them $100 or whether Souer did, but it is my impression that I paid them $100 on the land a very short time—perhaps a day or two—after I paid Souer the $100.

232 Q. Then if you did pay them $100 it was in addition to what you had paid Souer; you don't mean, do you, that you paid them and immediately after—in a few days—paid Souer?

A. No; it was in addition, as I remember; I am not sure whether I paid the $100 or whether Souer did; I believe that Souer paid that $100 to Tukey, but am not clear on that point.

Q. You don't remember that as well as you do the payment to Souer?

A. No; what confuses me is that I think I only paid Tukey $900 at the time the papers were transferred.

Q. Did you pay this by check or in cash?

A. I don't remember how I paid it now.

Q. You can't remember that and yet can remember the transaction with Souer so well.

A. A person usually remembers the first act taken in a transaction better than subsequent ones.

Q. Is that the only reason you can't remember?

A. That may be the reason.

Q. You know the reason why you don't remember, don't you?

A. No; I don't.

Q. How much did you pay Souer after you paid this $900 to Tukey & Keysor?

A. Well, Mr. Souer and I had some little misunderstanding and after the papers were transferred in my name I felt that I was a little more independent on the purchase——

Q. After you got it fixed?

A. Yes; after the papers were transferred I gave Souer my note for $1,500 payable one day after date, as I remember, for his interest in the ground.

Q. Why, he had no interest, had he, or had he ever exhibited any to you?

233 A. I bought the property of Souer, and in those real-estate days there was as much property sold on options, as I understood it, as was sold by the parties who held the legal title.

Plaintiff asks that the latter part of the answer be stricken from the record as not responsive to the question and a voluntary statement not asked for.

Q. When did you pay this note for $1,500?

A. Along about a year afterward, I think. I knew Souer boned

me for it several times, but as I was paying no interest I was not in a hurry to pay it, as I could use the money in my business to good advantage.

Q. How did you pay it?

A. I paid it in cash.

Q. Cash money?

A. Yes.

Q. You did not give a check for it?

A. Not as I remember.

Q. Was anybody present when you paid him the money in cash?

A. I don't remember that there was.

Q. Have you no recollection about that at all?

A. No; I have not.

Q. Do you know where it was?

A. Well, I judge it was in my office.

Q. Have you any recollection aside from the fact that you generally transact business in your office?

A. No. I should say it was in my office. I don't remember that it was anywhere else.

Q. And you don't remember that any one was present?

A. I don't remember that there was. There might have been three or four or five in the office, for anything I know now.

Q. You are very positive that you paid in cash and not by check, are you?

234 A. I think I paid it in cash. I think I got the currency from the safe.

Q. When was this?

A. It was about a year after I gave the note.

Q. About when would that be?

A. Along in May or June of 1886.

Q. When did you give the note?

A. I gave the note the day or the day after the transfer of the papers from Tukey & Keysor to Dickson and myself.

Q. And that note was payable one day after date, was it not?

A. Yes.

Q. How came you to give a note for it?

A. Well, I thought he ought to give me a little time on that amount, as he was making a fair profit.

Q. Then you knew it was profit he was making on the sale?

A. I did not know it, but I inferred as much.

Q. You wrote the letters that purported to have your name signed to them and filed with the deposition of Dickson in this case, didn't you?

A. I don't know; I have not examined the letters; they may have been forgeries.

Q. You were present at the time the deposition of Mr. Dickson was taken and when the letters were filed, were you not?

A. No, sir; not all the time; I was there a little while.

Q. Did you inform Mr. Dickson prior to the consummation of this purchase or at the time the terms had been agreed upon that $2,500 had to be paid in cash?

A. Yes.

Q. And didn't you collect from him $1,250, having him rely upon the fact that the $2,500 was being paid in actual cash?

A. Yes, sir.

235 Q. Now, when you paid the note, didn't you pay the accumulated interest from the date that you gave it until the date that you paid it?

A. Which note do you refer to?

Q. I refer to the note we have lately been speaking of—the one that you say you gave to Souer on the day or the day after the deeds were made.

A. I paid no interest. As I stated before, it was without interest.

Q. And do you now say that it was $1,400 or $1,500 that you paid?

A. The note was $1,500 and I gave him $1,500.

Q. If you had paid Tykey & Keysor $100 in cash you ought not have paid him but $1,400, ought you?

A. That will correct my memory now as to the point on which I was not clear where I did not know whether Souer had paid the $100 to Tukey or whether I had paid it.

Q. What will correct your memory?

A. The fact that I paid Souer $1,500.

Q. How will this correct your memory?

A. Because the amount of the notes I gave shows.

Q. How do you know the amount of the note?

A. Because I paid him $1,500 in cash.

Q. You have no other reason to know the amount of the note, have you?

A. That was the amount of the note I took up.

Q. Had you and Souer gone out there in a hired conveyance to examine this property?

A. We went out there to examine the property; I don't know whether in a hired conveyance or not.

Q. By way of refreshing your recollection in regard to that matter, I will ask you whether Souer and you did not have a dispute as to who should pay for the cost of the conveyance, and

236 think, now, if you don't remember from whom t-e conveyance was hired?

A. As I remember that little incident, I think that we had an old broken-winded down horse in a little trotting buggy which belonged to Edwin Davis and which was borrowed from Edwin Davis as a friend simply for the occasion, and that there was nothing at all paid for the hire of the conveyance.

Q. Then you do say it to be a fact that you and Mr. Souer never had any dispute or misunderstanding or disagreement as to who should pay for the conveyance in which you went to view this property?

A. None that I remember of.

Q. You can't remember anything about this?

A. There was no conveyance hired that I remember of.

A. You don't remember having a dispute about who was to pay for this conveyance or anything of the kind?

A. I remember that Souer told me that it was Edwin Davis' horse.

Q. Then, as a matter of fact, you don't remember whether there was a dispute about paying for the conveyance or not; there may have been or may not have been?

A. There may have been, but I don't think there was.

Q. I will ask you if you knew whether there was a custom, general in its nature, at that time when you made this purchase among real-estate men in the city of Omaha with regard to selling to each other a tract of land on what was known as a half commission.

A. There was a custom of that kind.

Q. What was this custom, and was it generally observed?

A. As I remember, if a brother real-estate man sold a piece of property which was listed by the other party he got half of the commission.

Q. What was the fact in regard to a sale to a brother real-
237 estate man was the purchaser?

A. I don't remember about that; I don't think there was generally any commission paid. There may have been some commission paid; I don't remember about that.

Q. Was it customary to pay a commission at all?

A. I don't remember about that; I think the real-estate man who made the purchase generally did not pay if he could get out of it.

Q. At the time this purchase was made by you Mr. Dickson was then as he always has been for several years last past living in Kansas City, was he not?

A. Yes, sir.

Q. He had never seen the property, had he?

A. Yes; he saw the property the time he was up here. We drove out over the property in question and he got out and drove a nail in a post. I remember this because he drove the nail in with his shoe; could not find anything to drive it with.

Q. When was that?

A. That was in the fall of 1884, I guess.

Q. He did not know anything about it at the time you purchased it—that is, anything in regard to what he had seen while here?

A. Yes; I showed him Patterson's subdivision when he was here that I had an interest in at the time, and he saw all the property. We drove over the whole tract.

Q. How does that enable you to say that at the time of the purchase he knew of the land that you were going to purchase?

A. He knew by reference to Patterson's subdivision; I explained it to him in a letter.

Q. Then he knew nothing about this locality except what you had written him in a letter?

A. I marked a small city map and sent him and called his
238 attention to its being near where we had driven.

Q. You called his attention in the letter to its being near

where you had driven; then you and he had your eye on it as early as the fall of 1884, didn't you?

A. No; there was nothing said about it at all at that time.

Q. Why did Dickson get off on this land and drive a nail in the post?

A. I had a sign this side of Patterson's subdivision, calling the attention of the public to Patterson's subdivision, which was located just two blocks south.

Q. That don't answer my question as to why Mr. Dickson got off to drive a nail on this particular tract of land?

A. I had a sign up and there was a board knocked down from the sign and he got out and drove a nail in. There was nothing said about the property; did not know anything about it, and had no thought of ever buying it at that time.

Q. He didn't see it, then, from the time you made the purchase or claimed the deed, I should say, until after you sent him a deed conveying the land to Bohme?

A. He did not see the property that I know of from the time that we purchased it until the time we sold it to Bohme.

Q. Had he been in Omaha from the time the purchase was made until the deed was made to Bohme?

A. Not that I know of.

Q. When did you make the arrangements which you say you made with Bohme in regard to conveying this property to him?

A. It was along in the first part of the month of October.

Q. About what date as nearly as you can remember?

A. I don't remember just what date.

Q. Was it the first week in October?

A. I think about the first week.

239 Q. How are you able to state that it was the first week in October?

A. It is simply my impression that it was the first part of October, because I know we were two weeks getting Bohme convinced of the fact that it was a good thing for him to buy.

Q. In the first part of October you spoke to him and it took two weeks to convince him that it was a good thing for him to buy. That would bring it somewhere near the 20th of October that the sale was made, wouldn't it?

A. I don't remember when it was. I know that we talked about it incidentally once in awhile, perhaps four or five times altogether, before he agreed to take it.

Q. Could you state anything approximately as to the date on which he agreed to take it and when the terms were finally agreed upon on which he could take it?

A. I don't remember. Possibly it was the middle of October.

Q. If you are so uncertain about that how is — that you are able to state in your direct examination that you know it was before anything was said with regard to the location of the Belt line near this property?

A. The reason that I remember that was the fact that I got my information from Mr. Himebaugh at the time that the deed was re-

turned or the day before the deed was returned possibly from Dickson to me, after having been signed, for the sale of this property to Mr. Bohme.

Q. And you now state on oath that that is the first that you heard of any prospective location of the Belt Line railway?

A. Yes; I will state that that was the first time I had heard anything positive that I believed in or put any faith in. There may have been reports perhaps, but nothing definite.

Q. Don't you know it to be a fact that you were expremely
240 alert and active in trying to find out where the Belt line would be located with reference to the situation of other property which you owned in this locality?

A. I don't think I was; I may have asked Mr. Clark once or twice in regard to it, but he never gave me any information.

Q. Do you know Dr. Swetman?

A. Yes.

Q. Are you the same Patterson who in the fall of 1885 arranged to make a purchase of some land in that locality and were negotiating with Dr. Swetman to go in with you on the deal?

A. I have no recollection of ever negotiating with Dr. Swetman for the purchase of any property in that locality at any time.

Q. Mayhap you do not understand what I mean by the expression "negotiating with him." I mean are you the same Patterson who in the fall of 1885 proposed an arrangement with Dr. Swetman under and by virtue of which you were to buy some land and become the joint and equal owners of it in this particular locality?

A. No; I don't know anything about it; don't remember it.

Q. Do you mean to say that you don't remember that you used as an inducement for him to go into the purchase the fact that the Belt Line railway was to be located in this vicinity?

A. I don't remember of ever talking to Dr. Swetman on any negotiation of that character.

Q. Leave out the negotiation part and confine yourself to the question as to whether your conversation applied to the location of the Belt Line railroad and that it was about to be located in this locality with the view of getting him to enter into the purchase.

A. I have a recollection of Dr. Swetman's asking me on or about February of 1886 about the five acres of ground which lie south of this property in controversy as to its value. I then perhaps
241 told him that in view of the prospect of the Belt line running east of this property that it would perhaps enhance the value of it and be a good thing for him to purchase. I believe he did purchase the five acres from Lew. Hill.

Q. I don't ask you as to the details of any transactions. I want you to simply answer my questions as to whether or not you made that statement to him.

A. I might have done so in connection with the explanation that I gave.

Q. And you never made such a statement to him prior to the sale of this land?

A. Not that I remember of.

Q. My question is, prior to this sale of this land to Bohme or alleged sale of land to Bohme.

A. No; I never did.

Q. Then you do admit that it was assumed that the railroad would be built for some months prior to October, 1885?

A. It was assumed that the Belt line would be built; but the Belt line is a different line from the Missouri Pacific, to which I referred in my direct testimony. The Missouri Pacific is west and the Belt line is east and a good ways east—a good half mile.

Q. When was the Belt line built?

A. My recollection is in the year 1886. I don't remember exactly.

The further taking of testimony was here adjourned until Thursday afternoon, February 7, 1889.

APRIL 20, 1889.

Cross-examination of R. C. PATTERSON resumed by consent of parties:

Q. When we adjourned the taking of this deposition, Mr. Patterson, you had stated that after you had delivered the deed to
242 this property to Bohme you learned through some one in regard to the location of the railway and thereupon concluded to buy it back from him—Boehme. How much did you agree to pay Boehme for the property in buying it back?

A. I paid $6,500.

Q. When was it you said Boehme paid the $6,000 which he agreed to give for the property in the deed to him?

A. It was in October some time; about the first part, as I remember, we agreed upon the price; I don't remember the time exactly.

Q. Now, when did Boehme pay the money he was to pay? I understand you say in your previous examination that he assumed the mortgage of $2,300 on the property; that would be $3,700 he was to pay; now, when did he pay that?

A. He assumed the $2,300 mortgage and gave me a note for $700 and paid me $3,000 in cash.

Q. Did he pay you that in cash currency? Do you mean to say that he did not give you a check for any portion of that $3,000.

A. When we bargained for the property, along the first of October, as I remember, I think he paid me about $500 in money.

Q. That was in cash money?

A. Yes; in money.

Q. And not by check?

A. No. Then he had been selling property for me—outlying property—on commission, and I owed him somewhere in the neighborhood of $300; don't remember exactly; and that was to apply on his cash payment and then the balance of the $3,000.

Q. Which was $2,200?

A. Yes; about that; he paid me in my office in money.

Q. He didn't give you a check for any portion of this?

A. No; I don't think he did; I don't remember seeing any check.

Q. Do you remember whether the balance was paid in currency or specie or both?

243 A. I think it was in currency, but it has been so long now I can't remember.

Q. Was it before or after the delivery of the deed to Boehme?

A. It was before I delivered the deed to him, as I remember it.

Q. Did you give him a receipt for the money?

A. I think I did. I think I gave him a receipt for the first payment, and then I gave him, added to that receipt, this commission that I owed him, and then endorsed on the back of the same receipt the balance which he owed on the cash payment.

Q. And you then took his note for $700?

A. Yes; I believe that was the amount.

Q. To whom was that note made payable?

A. To R. C. Patterson.

Q. How long was it before the delivery to Boehme of the deed to the property which was signed by yourself and Dickson?

A. Well, it was possibly a week. I think it took about a week for the deed to go to Mr. and Mrs. Dickson to be signed and returned.

Q. On the day that the deed got back here was it returned through the mail to you or to Mr. Boehme?

A. To me.

Q. Who delivered the deed to Boehme?

A. I did.

Q. Did you deliver it in person or lodge it for record in the office of the rigister of deeds for this county?

A. That I don't remember. I delivered it to him in person when it came back, but I have some recollection of him giving the deed back when I purchased it from him. Let me see about that. I believe that I agreed to purchase this property for $6,500 a day or two before the deed was returned, and then I took—I may never have given him the deed. I don't remember exactly, but I think I took the deed he had and the deed he made me and put them both on record.

244 Q. Did you put them on record yourself?

A. I am not sure.

Q. Do you remember before whom Boehme acknowledged the deed to him—that is, do you remember the notary without looking at the deed itself?

A. No; I don't remember.

Q. Do you remember whether or not Boehme acknowledged the deed to you before the deed from Patterson and Dickson to Boehme was lodged for record?

A. I should think that he did.

Q. I will ask you to look at the paper marked Exhibit 21, filed on the 23rd of April, 1888, before C. A. Potter, examiner in chancery herein, and returned with the plaintiff's proof, and state that this exhibit purports to be an official copy of the deed from Boehme to yourself, and call your attention specially to the name of the notary before whom that was acknowledged, and will ask you if you

know him and what, if any, business he is engaged in in this city.

A. Luther Drake; yes.

Q. You know him, do you?

A. Yes.

Q. I asked you what business he was in?

A. Banking business, I believe.

Q. How long did Boehme have any possession, or did he ever at all have in his possession the deed from yourself and Dickson to himself.

A. That I don't remember.

Q. You don't remember whether he ever had it in his possession at all, do you?

A. No.

Q. When you took the deed from Boehme to yourself I understand you to state the consideration was $6,500. What did you pay Boehme and how did you pay him?

245 A. I paid him $3,500.

Q. When did you pay him?

A. I paid him $500 to bond the bargain the day I agreed to purchase it. The balance I paid in one or two different payments.

Q. Could you state when it was you agreed to purchase it with reference to the date when the deed arrived here from Dickson?

A. Not definitely.

Q. I understood you to state that it was several days before the deed got here.

A. I did not say several days; possibly a day or two.

Q. It was some time—that is a short time—before the deed got here that you agreed to purchase ot?

A. That is my impression.

Q. You then paid him $500 in cash?

A. I paid the $500 in cash before the deed returned.

Q. Was ir paid by a check or in cash, currency, or specie?

A. Currency, I think.

Q. Now, after the deed got here, I understand you paid him $3,000 more. How was that paid?

A. I think I gave him $2,000 in cash immediately after I received his deed.

Q. Do you mean that you paid it by check or in cash money?

A. I don't remember whether I gave him a check or money now.

Q. You know where you kept your bank account then, don't you?

A. Yes.

Q. Can't you tell by an examination of that whether you paid it by check or not?

A. I didn't keep any regylar stub book and have no stub to show whether I paid it by check or not.

Q. Have you ever made an examination at your banker's to ascertain whether or not this payment showed on your bank account?

A. No, sir.

246 Q. What is your impression as to whether you paid it by check or in cash?

A. I don't remember now.

Q. How did you pay the remaining $1,000, and when was that paid?

A. I gave him a due bill one day after date for $1,000 without any interest—that is, without drawing interest.

Q. When was that paid?

A. I should say in about a month; am not sure.

Q. Did you make any other transfers to him or any other payments or deliver any other papers to him about this time?

A. I think I gave him back his note. I had a note of his for $700; I think he got that back at the beginning of the transaction.

Q. Are you quite positive about that?

A. Yes.

Q. Was this purchase by you from Boehme in good faith?

A. Yes.

Q. You mean to say you bought this property for yourself?

A. Yes.

Q. And there were no conditions whatever about it?

A. No, sir; there was not; and Mr. Boehme would tell you so if you had him on the witness stand.

Q. Are you certain that you have always stated that this was an absolute purchase for yourself from Boehme?

A. The purchase was made in good faith.

Q. Have you always so stated?

A. I have never known myself to state anything else.

Q. I will show you a paper, bearing date Omaha, Neb., March 8th, 1886, purporting to come from the office of R. C. Patterson & Co. and addressed to E. P. Dickson, Kansas City, Mo., and purporting to be signed R. C. Patterson, and ask you to state whether or not you write that.

A. Yes.

247 I offer this letter in evidence and ask that the notary identify it and make it an exhibit in behalf of the plaintiff in this action. The paper is marked Exhibit "30."

EXHIBIT "30."

OMAHA, NEB., *March* 8, 1886.

E. P. Dickson, Kansas City, Mo.

DEAR SIR: Yours of the 5th received and contents noted as far as could be deciphered.

You have evidently been shoved to the wall, as all you have done from the first has been to decline answering the points in my letters and refusing to read some of them, and now you refuse to believe the truth when it is told you, especially when it don't suit you. There is no use in wasting time writing to a man who won't reason or believe facts that can be substantiated. When the party who bought the ten acres was unable to raise all the money or give sufficient security I demanded property to be put conditionally in my name till that could be done. I most emphatically deny owing you one cent, whilst you owe me $2,250, or three-fourths of the $3,000

profit on the 10 acres sold in Kans. City, as I furnished ¾ of the cash payment. As to the right of allowing the deed to be changed from $6,000 to $10,000, I would simply say I had a perfect right to do as I choose for myself and as agent for the second party.

What you say in your last about the 10 acres in K. C. and what you said in former letters flatly contradicte.

I flatly deny that the 10 acres in Omaha *was* ever purchased by me for $3,000 or that they were ever sold for more than $6,000 and can prove what I say.

Yours, &c., R. C. PATTERSON.

248 Q. Mr. Patterson, pertinent to the same inquiry, I will show you paper purporting *yo* come from the office of R. C. Patterson & Co., Omaha, Neb., dated May 19th, 1886, purporting to be addressed to E. P. Dickson, Kansas City, Mo., signed R. C. Patterson, and ask you if you know who wrote the writing on that paper.

A. Yes.

Q. Who wrote it.

A. I did.

Plaintiff now offers this letter in evidence and asks that it be made an exhibit in this case and marked "Exhibit No. 31."

"EXHIBIT No. 31."

OMAHA, NEB., *May* 19, 1886.

F. P. Dickson, Esq., Kansas City, Mo.:

Your letter and card both rec'd and I note what you say; would have replied ere this, but sickness and other things have taxed my time day and night.

The claim you make of $112.93 is not disputed at all and will be paid just as soon as Boehme pays the note. The other $112 I sent you was advanced out of my own funds and I have not gotten it yet, but will now in the course of 30 days, as Boehme told me he would raise the money by the 10 June at least and pay it off.

Just as soon as he pays it in I'll send you c'k for am't in full. The am't is due you and I have not the least disposition to try to keep you out of it. It is not mine and I don't want it.

Yours, &c.,

R. C. PATTERSON.

Q. Referring to these two papers last named, one dated March 8th, 1886, and one May 19th, 1886, I will ask you to state if you did not take an impression copy of each of them before they left your office.

A. I should think I did.

249 Q. Referring to the exhibits filed by the plaintiff, F. P. Dickson, in this case, numbered from 1 to 13, inclusive, which purport to be letters from yourself to said Dickson, I will ask you to look at them and inform me whether or not impression copies were taken of any of those before they left your office.

A. I can't say from recollection; one letter looks as though it had been taken an *in*pression of—the one of October 21st, 1885.

Q. Can't you state whether or not any other of the exhibits covering the letters named were copied?

A. It looks as though the one of October 30th, 1885, had been taken an impression of.

Q. Those are all, as I unders*y*and, that look that way?

A. Yes.

Q. Referring to the same subject-matter, I call you- attention to a letter purporting to come from the office of R. C. Patterson, Omaha, Neb., under date of March 3rd, 1886, addressed to F. P. Dickson, Kansas City, Mo., and purporting to be signed by R. C. Patterson, this letter being written on three sheets of letter paper. I will ask you to examine that paper and inform me whether or not you wrote it.

A. Yes.

Plaintiff now offers this letter in evidence and asks that it be identified and made a part of his proof as Exhibit No. "32."

EXHIBIT No. "32."

OMAHA, NEBR., *March* 3, 1886.

F. P. Dickson, Esq., Kansas City, Mo.

DEAR SIR: Your favor rec'd and contents carefully noted. I sat down both yesterday and the day before to reply, but on account of office business was unable to do so in time for the mail. I have no doubt but that you think you have struck a bonanza and
250 that now you are all O. K. Your bonanza will turn out, however, similar to that of many who put their money into Colorado silver mines—it will all be in your mind.

The discrepancy between the deed which we all signed for $6,000, and the record of the same showing $10,000 is one that you might well be justified in looking upon with suspicion and for which I do not at all blame you. If you are not too suspicious in your nature and sufficient liberal to listen to a word of explanation (although you did not grant me an opportunity in your letter to explain) I will state how the discrepancy came about. After the papers in that transaction were all ready for delivery, the money paid and papers delivered Mr. Boehme, I think, felt a little shaky and wanted to do the best he could to make a quick sale and at the same time make some money. He came to me and said if I had no objection he would change the consideration from $6,000 to $10,000 in the deed and perhaps it would help him to do well on his purchase. I told him I had no objection whatever as I could see, as it made no difference to me what consideration he placed in the deed. It was so changed as the transfer afterwards showed. I never rec'd one cent over the $6,000. This is the simple explanation of the transaction, and to which I am ready and prepared to be qualified under oath any time and so is Mr. Boehme. As to the land originally being purchased for $3,600 I simply state is not true. If your "in-

vestigating committee" had been as careful to have looked up the records on that point as he was on the other, and at the same time have seen the proper person in regard to the fact, you would not have rec'd a false report.

I don't blame you at all for being aroused in your anger after having rec'd such a report from that "special investigating committee," and for that reason I can excuse you and look over what you said in your note.

251 After having rec'd the report you no doubt felt pretty good as you thought this would be quite an offset to the situation in which you are placed. For your sake I am sorry it was not as reported. For my own I am very glad to be able to explain all discrepancies in a manner that cannot be impeached, and when necessary can be proven up with living testimony and plenty of it. I requested Mr. Boehme to drop you a note and explain the record on the $10,000. I hope he has done so. If he has not I will see him personally and have him do so. As to the blackmailing scheme" with which you charge me I am amused more than otherwise. A guilty man, they say, will stand on dreams and jump from his own illusions into the air and return to find it was nothing more than the shadow of his own thought.

You certainly can't dispute the fact that I went in with you on the 10 acres and furnished the cash and you returned it saying, "We had sold" it for $10,000, and my net profit was $250 after com. were paid, but you have kept it yourself, hence no com., and $500 is due me. I shall feel very happy and much pleased if our little differences can be settled and without any trouble. I want no family jar in mine. I much prefer that my wife shall never know or any of her friends ever know of this difference. Her happiness and peace of mind is my concern, and what is hers in happiness is mone. Viewing our differences from a legal standpoint there is no question at all as to what can be done. My claims in court of equity could be established in 5 minutes' time, and all the subtlety of the legal fraternity in the United States could not overthrow it, but I must close to get this in next mail.

Very truly, R. C. PATTERSON.

Q. Referring to an exhibit numbered 28, which was filed with the deposition of Otto Boehme for indentification on the 28th day

252 of April, 1889, before C. A. Potter, examiner in chancery, at the instance of the plaintiff, I will ask you to look at said exhibit and state whether or not you know the handwriting thereof. This exhibit purports to be a letter under date Omaha, Neb., March 2nd, 1886, from Otto Boehme to Frank P. Dickson.

A. I don't know the handwriting well enough to identify it.

Q. Do you know the handwriting of Otto Boehme, the same Otto Boehme to whom you make the deed?

A. Not well enough to identify it.

Q. Did you ever see his handwriting?

A. Yes.

Q. Do you know whether or not the signature thereto is the signature of Otto Boehme?

A. I could not swear to it. I have seen his signature more than once, but I could not answer to his signature now.

Q. Now, I will ask you of you have ever seen that paper before.

A. I never have.

Q. I will ask you of you did not write it, the words and figures, from beginning to end and suggest that Mr. Boehme, the same man to whom you made this deed, should send it after having copied it in his own handwriting to Frank P. Dickson.

A. I did not.

Q. Did you not suggest that Boehme should write a letter of this same subject-matter to Mr. Dickson?

A. I dropped Mr. Boehme a note asking him to explain to Mr. Dickson how it came that the consideration in the deed of the property which he purchased from us had been changed from $6,000 to $10,000.

Q. Do you know when you dropped him that note?

A. I don't remember now.

Q. Could you state whether it was before the time that this purports to bear date, namely, March 2nd, 1886?

253 A. I could not say definitely, but I think it was some time after I discovered that Dickson had robbed me out of several thousand dollars in real-estate transactions in Kansas City.

Q. When was that?

A. I discovered it in the latter part of January, 1886.

Q. Could you give me your impression as to the date of your note to Boehme, as to whether or not it approximated the date of this Exhibit No. 28?

A. I don't remember.

Q. Then I will show you a paper purporting to come from the office of R. C. Patterson, dated Omaha, Neb., March 1st, 1886, addressed to Otto Boehma and signed R. C. Patterson, and ask you to look at that and tell me if you know who wrote it.

A. Yes.

Q. Did you write it?

A. Yes.

The plaintiff now offers that paper bearing date March 1st, 1886, in evidence, and asks that it be made a part of the record herein and be marked as Exhibit No. "33."

EXHIBIT No. "33."

OMAHA, NEB., *March* 1, 1886.

Mr. Otto Boehme, city.

DEAR SIR: I have just received a letter from Mr. Frank P. Dickson, of Kansas City, in which he states that he understood that you paid $10,000 for the 10 acres you bought of me last fall, instead of $6,000. He says the record shows $10,000, and now he thinks he was cheated out of $2,000. You know I told you at the time that

Mr. Dickson owned an undivided half in the 10 acres, and that half of the money went to him. Please do me the favor to drop Mr. Dickson a note, explaining why the records show $10,000
254 instead of the actual price. I never thought at the time you asked me if you might change the deed from $6,000 to $10,000 before you placed it on record it would ever amount to anything, or I should not have granted your request so willingly. This shows the folly of sometimes doing innocent things. It certainly places me in a very unpleasant light, and I feel you will be only too glad to explain the facts to Mr. Dickson and fully exonerate me.

Yours resp't., R. C. PATTERSON.

P. S.—Mr. Dickson's address is Frank P. Dickson, 510 Delaware St., Kansas City, Mo.

Q. During the year 1886 you and Dickson had considerable correspondence over this matter, did you not, on up to the time the suit was filed?

A. Not over this matter so much as over the matter of Dickson having deceived and misrepresented the facts to me about a real-estate transaction in which I was interested with him in Kansas City.

Q. I understand you to say that you made the sale of this property to your codefendant, Martin; is that correct?

A. Yes.

Q. To Isaac Martin, was it?

A. Yes.

Q. Who is Isaac Martin, and where did he live at the time you made this sale to him?

A. I simply knew him as Isaac Martin; where he lived at that time I don't know.

Q. When did you first see him with regard to the date of the contract from yourself to him for the sale of the property now in controversy?

A. It was on that day or the day following that I first met him.

Q. The day following what?

255 A. The date of the contract; I mean the day previous or the day of the contract.

Q. How did you come to meet him?

A. He brought a letter of introduction to me from a friend of mine.

Q. Who was the friend?

A. Mr. Wertz.

Q. What was his first name and where did he reside?

A. Thomas Wertz, I think, is the first name; he may have a middle letter, but I don't remember what it is.

Q. Where did he live then and where does he live now?

Q. He lived then and now, as I understand, in the State of Ohio, at the post office of Dalton.

Q. What was his occupation?

A. He was a travelling man.

Q. Have you that letter of introduction?

A. No; I don't know where it is now; it was merely a note of introduction.

Q. Where did Martin then live?

A. I think he lived at that time in Pennsylvania.

Q. You had never seen Martin before then, as I understand you?

A. No, sir.

Q. This contract between yourself and Martin purports to bear date the 17th of February, 1887; was that the true date of the transaction, Mr. Patterson?

A. I judge so from the contract.

Q. The deed bears date June 4th, 1887; is that the correct date upon which the deed was executed?

A. Yes.

Q. Was Mr. Martin in the city of Omaha at that time?

A. Yes.

Q. Had he been in the city of Omaha from the date of the contract until that time?

256 A. Not that I know of.

Q. Had you seen him between the date of the contract and the date of this deed?

A. Not that I remember of.

Q. Was Mr. Martin a large dealer in real estate in the city of Omaha?

A. Not that I know of.

Q. Do you know of his having made any other purchases except this?

A. No; I do not.

Q. Did he have any representative in the city?

A. I don't know.

Q. Did he have any real-estate agent here to make purchases and sales for him?

A. None except myself that I know of.

Q. Did you have any correspondence with him between these dates, the date of the contract and the date of the deed?

A. I never had a letter from him.

Q. How much money did he pay you when you gave him this contract?

A. I could not tell now without refreshing my memory from the contract.

Q. Did you write the contract?

A. I don't remember whether I did or not; possibly one of my clerks wrote it.

Q. Would not your books show how much money he paid you?

A. I never kept any regular set of books in my office.

Q. You have no books, then, that would show how much he paid you?

A. I never was in business with any one that it was necessary to keep books at all until the fall of 1887. I took a partner then for the first time.

Q. I repeat my question as to whether you had any books

257 that would show any of these transactions—any payments made or credits given.

A. There may be an account in an old book about the office that I am not positive about.

Q. Then you don't know whether you have anything of that kind or not?

A. Not for sure.

Q. This contract states that in consideration of the sum of $23,125 you convey this property to Martin that is described in the deed—$1,125 to be paid upon the delivery of the contract and the remainder as follows: $1,000 in 30 days, $1,000 in 60 days, $5,000 in 90 days, and $15,000 in one, two, and three years from the date of this agreement. Now, will you please tell me whether or not all of this purchase price, that under the terms of this contract is past due, has been paid?

A. No, sir?

Q. How much of it has been paid?

A. The first $1,125 upon the making of the contract; the next $1,000 which was to have been paid in 30 days was not paid nor the next payment was not made as per terms of contract, and without looking at the contract to refresh my memory I don't think there was anything paid until the time of the date of the deed, along about the 1st of June of the same year.

Q. How much was paid then?

A. I could not tell without looking at the contract; the contract shows how much was paid—how much in cash was paid.

Q. How was the $1,125 on February 17th paid?

A. In cash.

Q. Do you mean in actual money, specie, or currency?

A. In actual money, in my office, at 322 S. 15th street, Omaha.

258 Q. Was a check given for any portion of it?

A. No.

Q. What particular person delivered the money to you?

A. Isaac Martin delivered it to me himself, or, rather, paid it to my clerk and my clerk gave it to me.

Q. Was an order given on any one for any portion of it?

A. Not that I remember.

Q. How much money was paid on the 4th of June, 1887, or about that time, whenever the deed was delivered?

A. Without refreshing my memory from the contract I could not say definitely. There was a little difficulty between Martin and myself by which he received so much credit as cash for eight lots, which I took upon myself the responsibility of selling by reason of the fact that he has not kept up his payments as per the terms of our contract, one of these terms being the essence of time.

Q. You did not then declare the contract forfeited, but proceeded to sell some of the lots. Is that it?

A. In my business as a dealer in real estate I never declared a contract forfeited by any action at law, but when the parties did not keep their contract as per the terms of that contract, they having a

duplicate or the original in their possession from which they could see what the terms were, and if I saw fit I resold the payment without consulting them.

Q. Now, one word more with regard to Isaac Martin. Have you ever seen him since the delivery of this deed to him?

A. Yes.

Q. When?

A. I saw him last summer.

Q. What time last summer, about what month?

A. I think in the month of April; last spring that would be, some time in April. I saw him in the fall of 1887 if I remember correctly.

259 Q. Have you seem him at any other times except the times you have mentioned up to this date?

A. No, sir.

Q. Where did you see him in April, 1888?

A. I met him in Chicago.

Q. Where did you see him in the fall of 1887?

A. Some time in the month of August or September; I don't remember which now; in the early part of the fall.

Q. My question was where did you see.

A. I saw him in Omaha.

Q. Did he on either of these occasions make any payments of money to you?

A. No, sir.

Q. Has he ever paid any other portion of the purchase-money than what is credited on the contract?

A. No, sir; he has not.

Q. Is Martin any relation of yours?

A. No, sir.

Q. Any relation of your wife?

A. No, sir.

Q. Any relation of your family?

A. No, sir; not that I know of, in any way, shape, or form.

Q. Where does he live now?

A. I don't know where he lives now. I have not heard of him or seen him since the time I spoke of.

Q. Have you ever asked him for the payment of these notes?

A. No, sir.

Q. Where are the notes?

A. The notes are in my possession.

Q. Why have you never collected them?

A. By reason of this lawsuit having been brought, which puts the title in question. I have never asked the notes to be paid

260 until this was cleared up.

Q. Now, referring to this land contract between yourself and Martin and the deed from yourself to Martin, I will ask you to state whether or not it is not a fact that both of them were fixed up as mere shams after this controversy between yourself and Dickson had come up.

A. No, sir; they were not—emphatically not—and I don't think that any such question should be asked a witness on the stand.

Q. Referring to the land contract purporting to be signed by Isaac Martin and R. C. Patterson, I will ask you to state who is J. O. Patterson who is the witness, and in whose presence it purports to be signed.

A. He is my brother.

Q. Referring to the deed from yourself and wife to Isaac Martin, I will ask you to state who is the John O. Patterson before whom the deed is acknowledged.

A. He is the same; my brother.

Q. Referring to the name Isaac Martin, signed to this contract, I will ask you who wrote that.

A. Wrote what?

Q. The name Isaac Martin.

A. Isaac Martin himself.

Q. You did not write it?

A. No, sir.

Q. And your brother did not write it?

A. No, sir.

Q. No person other than Isaac Martin from whom you received the letter of introduction wrote it?

A. I saw Mr. Martin write his name on the contract.

Q. Did anybody else see him write it?

A. Three or four persons.

261 Q. What was Martin's address between the time when the contract was written, February 17th, and June 4th, 1887, the date of the deed to Isaac Martin?

A. Chicago.

Q. Where in Chicago?

A. Care of Palmer house.

Q. What has been his address since the 4th of June, 1887?

A. I don't know.

Q. What portion of Pennsylvania did he live in?

A. He lived in Philadelphia at the time I knew him.

Q. What business was he engaged in?

A. I don't know; I never enquired anything about his business.

Q. How long did he live in Philadelphia?

A. I don't know that.

Q. How came his address to be in Chicago from February 17th to June 4th, 1887?

A. He told me if I had anything to communicate to address him in Chicago.

Q. Did you communicate with him during this time?

A. No, sir.

Q. You never asked for the payment of this money between February 17th and June 4th, 1887?

A. Not that I remember of.

Q. You just went ahead and made the sale of the lots and made no demand on him for the payment?

A. Yes; I would have been very anxious at that time for him to have dropped the matter.

Q. Then you made no demand on him for the payment?

A. No, sir.

Q. Referring again to this land contract, the original thereof, I wish you would take it, please, and tell me who wrote the
262 name in ink that fills in the blank space in the body of the contract?

A. It looks like my brother's writing.

Q. Which brother?

A. John O. Patterson.

Q. Can you state whether it is his or not?

A. Yes; I feel positive that it is.

Q. Are you sure that it is not Martin's writing?

A. No; Martin did not write it.

Q. Referring to the original deed from yourself to Martin, will you look at it and state in whose handwriting the blank spaces are filled in?

A. The deed is in my own handwriting.

Q. I will ask you of you are a pretty good judge of handwriting.

A. No, sir; I don't profess to be.

Q. I will ask you to look at the word Isaac, where Isaac Martin is signed to this contract, and also the Isaac Martin written in the body of the contract where he is named in the third line there of as one of the parties, and state to me whether or not, in your opinion, they are written by the same party.

A. No, sir; not that I know of.

Q. They look a little bit alike, don't they?

A. Not that I know of; I don't so notice.

Q. Do you know positively that they were not written by the same party?

A. I don't believe they were.

Q. Have you any letters in your possession from Isaac Martin?

A. I don't think I have now.

Q. How old a man is Isaac Martin?

A. I don't know.

Q. What kind of a looking man was he then?

A. He was an ordinary looking man.

263 Q. Give a description of his personal appearance as nearly as you can as to age, size, height, &c.

A. I don't know as to his age, whether he was 35 years old or whether he was 45 years old; he was a man of medium size, and, I think, had dark hair; as to the color of his eyes, I don't remember.

Q. Did he have a beard or not?

A. I think he had a moustache; don't think he wore a beard: he was here and purchased this property at a time when real estate was very active and we didn't look at a man very closely; we had too many to take care of.

Q. When and at what places did you say you saw him since the 4th of June, 1887?

A. That I have already answered.

Q. Well, how do you answer it? I have forgotten the answer.

A. If the notary will refer to the questions and answers they will enlighten you.

Q. Don't you remember when it was?

A. I said that I saw him in Philadelphia about the 1st of April or latter part of March, 1888, and that he was here in Omaha in 1887, in the month of August.

Q. Since the 4th day of June, 1887, have you seen him at any other time or places?

A. No, sir; I have not.

Q. How long did he remain in Omaha when here on the 4th day of June, 1887, so far as you know?

A. I only saw him in my office for about two hours; as to the time he had been here before or the length of time he remained aft-r *after* that I don't know.

Q. Did you see him any day other than the 4th of June on the occasion of that trip?

A. I only saw him once on the occasion of that trip, at which time he received his deed.

264 Q. In the fall of 1887, when you say you saw him, will you state how many times you saw him, and the different days?

A. I saw him once.

Q. Where was that?

A. In my office, 322 S. 15th street.

Q. Do you know the occasion of his visit here then?

A. No, sir.

Q. You had no business with him at all then?

A. None in particular that I cared to bring before him at that time.

Q. Who employed the attorney to represent him in this case?

A. I did.

Q. What was the occasion of your seeing him in Philadelphia in the spring of 1888?

A. I met him there by accident.

Q. Where did you meet him by accident?

A. It was either in the Continental or the Gerrard, across Chestnut street.

Q. Did you see him at his place of business, or did you know whether he had any place of business?

A. I was there on other business.

Q. Did you say anything to him about any of these notes?

A. Yes, we talked about it.

Q. Did you have the notes with you?

A. No.

Q. He did not pay them, did he?

A. I didn't ask him to pay them.

Q. On the 4th day of June, 1887, when you gave him this deed, did you learn where his place of residence was?

A. I was then advised to write to Chicago, care of Palmer house.

Q. Didn't you just now state that his address between the 17th

of February and the 4th of June, 1887, was Palmer house, Chicago?

265 A. That is what I stated.

Q. Where was it after June, 1887?

A. Same place, so far as I know.

Q. You knew that he was a resident of Pennsylvania and so stated in the deed, didn't you?

A. I understood that he was from a remark that he made, but I didn't so state in the deed or the contract, as I know of, as it was not my custom to state the residence of the parties in either the contracy or the deed for the simple reason that other real-estate agents might perhaps get on to the residence of my customers or purchasers from the records in case said contracts and deed were a matter of record.

Q. Did you deliver to him in person this deed on June 4th, 1887?

A. I believe so; should judge so from the deed.

Q. Did he take it away with him?

A. So far as I know, he did.

Q. How did it happen that this deed was not lodged for record until the 18th day of August, 1887, just 14 days after this action was instituted?

A. That I don't know.

Q. Don't you remember the fact to be that you lodged this deed for record yourself and paid to the clerk the record fees thereon?

A. No, sir; I did not.

Q. Did one of your brothers or some one else by your directio pay to Mr. Needham, the county clerk, the fees for this service?

A. No; not that I know of.

Q. Why was it not recorded prior to the time that it was?

A. That I could not say.

Q. He had it recorded himself, did he, Mr. Martin?

A. I don't know anything about who had it recorded. I know that I did not have any one about me or that was acquainted

266 with me have it recorded. I should judge the county clerk could advise you on that point.

Q. On the 4th day of June, 1887, this contract states that $3,300 was paid, in cash, by Martin to you. Was that paid in money or by check?

A. My recollection is that he gace me a $3,000 draft and the balance in money; I am not clear on that point.

Q. Where did you get the draft cashed?

A. I think I sent that draft East.

Q. You say you think you sent it East?

A. My recollection is that I sent it East to a party I owed some money.

Q. What party, who was he, what was his name, and where did he live?

A. His name was Neff, and he lived at Petersburg, Pa.

Q. What was his full name, and what was his business?

A. N. C. Neff; business, farming.

Q. Now, I want to know what his full name is.

A. Milton Cunningham Neff.
Q. How's the last name spelled?
A. Neff.
Q. And where did he live?
A. At Petersburg, Pa.
Q. What did you owe him for?
A. I owed him for money I had borrowed four or five years ago from him.
Q. Is he any relation of yours or your family?
A. Yes.
Q. Well, what relation.
A. He is a full cousin of mine.
Q. Is he the son of your mother's brother or sister?
A. The son of my mother's sister.
Q. Is he now living or dead?
267 A. Living.
Q. Where does he live now?
A. Who,
Q. Neff?
A. He lives at the same place and can be reached by letter through the mails at any time.
Q. You endorsed this draft to him, did you?
A. I must have done so; yet I don't remember if I did or not.
Q. The draft was on some bank in the East, was it?
A. I think it was.
Q. Was it check or draft made by Martin?
A. I don't remember, but I think it was a draft which he bought of some bank.
Q. What bank.
A. I don't remember.
Q. Do you know whether it was the Bank of Pennsylvania or not?
A. I don't know that.
Q. You don't know what State or city it was?
A. My impression is that it was a New York draft.
Q. Do you know on what bank in New York.
A. No.
Q. Do you know who was payee on the draft?
A. Martin was, if I remember right.
Q. Did he indorse it to you or in blank?
A. That I am not clear on.
Q. Are you sure that he gave you the draft?
A. Yes.
Q. Why did you say a few minutes ago that you were not certain about it?
A. It is my impression now that he did give me a draft.
Q. How did he pay the $3,000?
A. In currency—that is, in money of some kind. I don't remember whether it was in currency or not.
268 Q. Now, I want to ask you a plain question. Didn't your

of February and the 4th of June, 1887, was Palmer house, Chicago?

265 A. That is what I stated.

Q. Where was it after June, 1887?

A. Same place, so far as I know.

Q. You knew that he was a resident of Pennsylvania and so stated in the deed, didn't you?

A. I understood that he was from a remark that he made, but I didn't so state in the deed or the contract, as I know of, as it was not my custom to state the residence of the parties in either the contracy or the deed for the simple reason that other real-estate agents might perhaps get on to the residence of my customers or purchasers from the records in case said contracts and deed were a matter of record.

Q. Did you deliver to him in person this deed on June 4th, 1887?

A. I believe so; should judge so from the deed.

Q. Did he take it away with him?

A. So far as I know, he did.

Q. How did it happen that this deed was not lodged for record until the 18th day of August, 1887, just 14 days after this action was instituted?

A. That I don't know.

Q. Don't you remember the fact to be that you lodged this deed for record yourself and paid to the clerk the record fees thereon?

A. No, sir; I did not.

Q. Did one of your brothers or some one else by your directio pay to Mr. Needham, the county clerk, the fees for this service?

A. No; not that I know of.

Q. Why was it not recorded prior to the time that it was?

A. That I could not say.

Q. He had it recorded himself, did he, Mr. Martin?

A. I don't know anything about who had it recorded. I know that I did not have any one about me or that was acquainted

266 with me have it recorded. I should judge the county clerk could advise you on that point.

Q. On the 4th day of June, 1887, this contract states that $3,300 was paid, in cash, by Martin to you. Was that paid in money or by check?

A. My recollection is that he gace me a $3,000 draft and the balance in money; I am not clear on that point.

Q. Where did you get the draft cashed?

A. I think I sent that draft East.

Q. You say you think you sent it East?

A. My recollection is that I sent it East to a party I owed some money.

Q. What party, who was he, what was his name, and where did he live?

A. His name was Neff, and he lived at Petersburg, Pa.

Q. What was his full name, and what was his business?

A. N. C. Neff; business, farming.

Q. Now, I want to know what his full name is.

A. Milton Cunningham Neff.
Q. How's the last name spelled?
A. Neff.
Q. And where did he live?
A. At Petersburg, Pa.
Q. What did you owe him for?
A. I owed him for money I had borrowed four or five years ago from him.
Q. Is he any relation of yours or your family?
A. Yes.
Q. Well, what relation.
A. He is a full cousin of mine.
Q. Is he the son of your mother's brother or sister?
A. The son of my mother's sister.
Q. Is he now living or dead?
267 A. Living.
Q. Where does he live now?
A. Who,
Q. Neff?
A. He lives at the same place and can be reached by letter through the mails at any time.
Q. You endorsed this draft to him, did you?
A. I must have done so; yet I don't remember if I did or not.
Q. The draft was on some bank in the East, was it?
A. I think it was.
Q. Was it check or draft made by Martin?
A. I don't remember, but I think it was a draft which he bought of some bank.
Q. What bank.
A. I don't remember.
Q. Do you know whether it was the Bank of Pennsylvania or not?
A. I don't know that.
Q. You don't know what State or city it was?
A. My impression is that it was a New York draft.
Q. Do you know on what bank in New York.
A. No.
Q. Do you know who was payee on the draft?
A. Martin was, if I remember right.
Q. Did he indorse it to you or in blank?
A. That I am not clear on.
Q. Are you sure that he gave you the draft?
A. Yes.
Q. Why did you say a few minutes ago that you were not certain about it?
A. It is my impression now that he did give me a draft.
Q. How did he pay the $3,000?
A. In currency—that is, in money of some kind. I don't remember whether it was in currency or not.
268 Q. Now, I want to ask you a plain question. Didn't your

brother or you—one—write that name Isaac Martin at the bottom of that contract?

A. No, sir; not that I know of.

Q. After the date of this contract—February 17, 1887—and before the deed of June 4, 1887, how many of these lots did you sell?

A. I think I sold eight. The record would probably show that.

Q. What was the price that you sold each of them for?

A. I don't remember that now; something like $700 or $800 each, but the consideration in the deeds was made more, but I don't remember how much more.

Q. There is a deed filed with the plaintiff's proof marked Exhibit "23" and filed on the 23rd day of April, 1888, before Charles A. Potter, examiner, conveying lots No-. 1, 2, 23, & 24, in block No. 1, East Side addition, to Jacob Fawcett in consideration of $3,600. Is Jacob Fawcett an acquaintance of yours?

A. Yes.

Q. How long have you known him?

A. I have known him since just about the time of the date of that deed which you gave.

Q. What have been your business relations with him for the last two or three years?

A. About the 1st of September, 1887, Jacob Fawcett became a partner of mine in the real-estate and loan business.

Q. And you have been partners since then, have you?

A. No, sir.

Q. How long did you remain in partnership?

A. Until about the 1st of April, 1888, at which time he sold his interest to one Frank Barnard.

Q. Are you now *now* jointly interested in the same bank?

A. We are stockholders in the same bank.

269 Q. You are both officers of the bank, are you not?

A. I am president of the bank.

Q. Isn't Mr. Fawcett also an officer?

A. He is a director of the bank.

Q. By Exhibit No. 24, filed at the same time and before the same examiner by the plaintiff, it appears that on the 1st day of May, 1887, you sold No. 3, in block No. 1, to William Peppin in consideration of $900. How long have you known him?

A. I met him along about the same time, being introduced to him by Jacob Fawcett.

Q. Have you had any business relations with him since?

A. Not that I know of.

Q. Is he in any way related to Mr. Fawcett?

A. Not that I know of.

Q. By Exhibit "25," filed on the same date, same behalf, and before the same party, it appears, on the 1st day of May, 1887, you conveyed to Eugene W. Montgomery, in consideration of $1,800, lots 4 and 21 in block 1, East Side addition. Who was Eugene W. Montgomery?

A. I don't know. I sold the lots through an agent, and the con-

sideration was greater in the deed than the price paid for the lots in all of these sales.

Q. By Exhibit No. 26, filed the same day, same behalf, and for the same party, you appear to have conveyed to August J. Millhouse and others, in consideration of $900, lot No. 22, in block No. 1, in East Side addition. Who was this party?

A. I don't know him; never saw him. I sold the lots through an agent.

Q. Who was that agent?

A. Jacob Fawcett.

Q. Who was the agent for the sale of the Montgomery lot?

A. Jacob Fawcett.

270 Q. Were any other lots sold?

A. I think there was another lot sold to some person, but I don't remember his name now.

The plaintiff hereby gives notice to the defendant to produce on the hearing of this case in court the original of the contract alleged to have been entered into on the 17th day of February, 1887, between Isaac Martin and R. C. Patterson, as well also the original of the deed alleged to have been made from R. C. Patterson and wife to said Isaac Martin on the 4th day of June, 1887.

Q. Mr. Patterson, you understood pretty well the method of real-estate agents, didn't you, and the customs that prevailed among them with regard to commissions on the sales of real estate, both with regard to sales for other parties to each other and for each other?

A. I do not understand any except my own; don't know anything positive except about my own commissions and methods of charging commissions.

Q. I will ask you to look at the paper bearing date December 11th, 1885, purporting *yo* have been written from the office of R. C. Patterson, in Omaha, Nebraska, to "My Dear Frank" and signed R. C. Patterson, and ask you if you know who wrote that.

A. Yes.

Q. Well, who wrote it?

A. I wrote this letter to Frank P. Dickson December 11th, 1885, about the 10-acre piece of ground I went in and purchased with him, and concerning which 10 acres I have now a suit in court against Dickson to recover my just dues.

Q. I notice that in this you state as follows: "That is, the 10 acres will cost $9,000. Can it not be gotten for less cash down there? You buy through an agent. If so, could I not come down and buy *iy* myself and save $250 on commissions? In that case you

271 would not be held by the agent, or the seller would not be required to pay him any commission." Is that anything like the method that you adopted to get this from Tukey & Keysor?

A. I don't understand what you mean.

RICHARD C. PATTERSON.

EXHIBIT "A."

Know all men by these presents that we, Alonzo P. Tukey and Elizabeth I. M. Tukey, his wife, and William W. Keysor and Jennie E. Keysor, his wife, all of Omaha, Douglas county and State of Nebraska, in consideration of the sum of forty-eight hundred dollars in hand paid by Richard C. Patterson and Frank P. Dickson, of Douglas county and State of Nebraska, do hereby sell and convey unto the said Richard C. Patterson and Frank P. Dickson the following-described premises, situated in the county of Douglas and State of Nebraska, to wit: The north half of the south half of the southwest quarter of the southwest quarter *of the southwest quarter* of section twenty (20), in township fifteen (15) north, of range thirteen (13) east, containing ten acres, more or less, according to the Government survey.

And we hereby covenant with said Richard C. Patterson and Frank P. Dickson that we hold said premises by good and perfect title; that we have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever; and we covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever.

And the said Elizabeth I. M. Tukey and Jennie E. Keysor hereby relinquishes her right of dower in and to the above-described premises.

Signed this ninth day of June, A. D. 1885.

ALONZO P. TUKEY.
ELIZABETH I. M. TUKEY.
WM. W. KEYSOR.
JENNIE R. KEYSOR.

In presence of—
DEXTER L. THOMAS.

272 EXHIBIT "A."

STATE OF NEBRASKA, }
Douglas County, } *ss:*

On this tenth day of June, A. D. 1885, before me, Dexter L. Thomas, a notary public within and for said county, personally came Alonzo P. Tukey & Elizabeth I. M. Tukey, his wife, and William W. Keysor & Jennie E. Keysor, his wife, personally known to me to be the identical persons whose names they affixed to the above instrument as grantors, and severally acknowledged the execution of the same to be their voluntary act and deed for the purposes therein expressed.

In witness whereof I have here*by* subscribed my name and affixed my official seal, at Omaha, Nebraska, on the date last above written.

[SEAL.] DEXTER L. THOMAS,
Notary Public.

Endorsement on back: Warranty deed. Alonzo P. Tukey and Wm. W. Keysor to Richard C. Patterson and Frank P. Dickson. Dated June 9, 1885.

STATE OF NEBRASKA, } ss:
Douglas County, }

Filed for record and entered in numerical index June 10, 1885, at 3¼ o'clock p. m. Recorded in Book 59 of Deeds, on page 449.

H. T. LEAVITT,
County Clerk and ex Officio Recorder.

EXHIBIT "B."

Land Contract.

A contract made the 17th day of February, one thousand eight hundred and eighty-seven, between Richard C. Patterson, of Omaha, Nebraska, of the first part, and Isaac Martin, of the second part, witnesseth as follows, to wit:

I. The party of the first part, for himself, his heirs, execu-
273 tors, and administrators, agree- to sell to the party of the second part all that certain piece or parcel of land situated in the county of Douglas and State of Nebraska, known and described as follows, to wit: Lots number one (1) to number twenty-four (24), inclusive, in block one (1), and lots number one (1) to number twenty-six (26), inclusive, in block two (2), in East Side addition, as surveyed, platted, and recorded.

II. The party of the second part, for himself, his heirs, executors, administrators, and assigns, agree- to pay to the party of the first part for the said blocks the sum of twenty-three thousand one hundred and twenty-five dollars in the manner following, to wit: Eleven hundred & twenty-five dollars on the delivery of this contract and the remainder as follows: One thousand dollars in thirty days, one thousand dollars in sixty days, five thousand dollars in ninety days, and fifteen thousand dollars in one, two, and three years, all from date hereof. On full payment of $8,125 per terms of agreement first party agrees to make deed and accept first mortg. for balance due at the office of the place of business of said party of the first part or his assigns, in the city of Omaha, with interest thereon at the rate of eight per cent. per annum until due, and thereafter on the whole sum remaining due or unpaid in each year, interest at eight per cent. per annum until paid; and the said party of the second part shall also pay and discharge all the taxes and assessments imposed on said premises from and after the date hereof, whether ordinary, extraordinary, or for revenue purposes, within three months from the first day of which the same become due and payable; and the party of the second part agrees to build on said premises on or before — from date hereof for the benefit of said first party till said land is paid for.

274 III. Forthwith, after the full pay-ent of said purchase-money, taxes, and interest as aforesaid (time being the essence

of this contract), the party of the first part agree to execute or cause to be executed to the party of the second part a good and sufficient warranty deed for the said blocks, to be delivered on the surrender of this duplicate contract.

But in case the second party shall fail to make the payments aforesaid or any of them punctually and upon the strict terms and times above limited, and likewise to perform and complete all and each of — agreements and stipulations aforesaid strictly and literally without any failure or default (the times of payment being the essence of this contract), then the party of the first part shall have the right to declare this contract null and void, and all rights and interests hereby created or then existing in favor of the said second party or derived under this contract shall utterly cease and determine, and the premises hereby contracted for shall revert to and revest in said first party (without any declaration or forfeiture or act of reentry or without any other act by said party to be performed, and without any right of said second party of reclamation or compensation for money paid or improvements made) as absolutely, fully, and perfectly as if this contract had never been made.

And it is further agreed on the part of the purchaser that a failure to pay any installment of principal or interest or failure to keep any of the covenants and agreements herein made by him shall work a forfeiture of all his rights, and that thereupon the first party may, it he so elects (and the purchaser waives any notice of such election), treat any purchaser as a tenant holding over and at sufferance and proceed against said purchaser by summary action of forcible entry and detainer to recover possession. The second party waives all right he may have in court if he fails to meet payments and forfeit all money paid.

275 And it is further agreed that no sale, transfer, assignment, or pledge of this contract shall be in any manner binding upon the party of the first part, unless he first consents in writing hereon, indorsed to such sale, transfer, assignment, or pledge.

This is a duplicate contract, and it is agreed by the parties hereto that no assignment, sale, pledge, or transfer of this duplicate copy shall be of any validity or force whatever unless such assignment, sale, pledge, or transfer be made on the copy in the hands of the party of the first part.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

ISAAC MARTIN.
RICHARD C. PATTERSON.

In presence of—
J. O. PATTERSON.

Endorsements.

Contract for sale of bl'k's one & two, East Side, from R. C. Patterson to Isaac Martin.

(Writen in blue pencil across back:) Canceled June 4, '87, and deed given. Original.

Amount sold for	$23,125 00
Dated February 17, 1887.	
Cash payment	1,225
Due	
P'd cash June 4, 1887	3,300
P'd by eight lots, 1, 2, 3, 4, 21, 22, 23, & 24, B. T.	3,700

276 EXHIBIT "C."

Warranty Deed.

Know all men by these presents, that I, Otto Boehme (unmarried) of Omaha, Nebraska, in consideration of ten thousand five hundred ($10,500) dollars, in hand paid, do hereby grant, bargain, sell convey and confirm unto R. C. Patterson of the same place and State the following-described real estate, situate in the county of Douglas and State of Nebraska, to wit: The north half of the south half of the southwest quarter of the southwest quarter of section twenty (20) in township fifteen (15) north of range thirteen (13) east of the sixth principal meridian containing ten acres more or less—now known as Patterson and Dickson place subject to one mortgage of twenty-three hundred dollars and all taxes to date.

Together with all the tenements, hereditaments and appurtenances to the same belonging, and all the estate, title, dower, claim or demand whatsoever, of the said Otto Boehme, of, in and to the same or any part thereof; to have and to hold the above-described premises with the appurtenances, unto the said R. C. Patterson and to his heirs and assigns, forever: And I the said Otto Boehme for myself and my heirs, executors and administrators, do covenant with the said R. C. Patterson and with his heirs and assigns that I am lawfully seized of said premises, and that they are free from incumbrance, that I have good right and lawful authority to sell the same, and that I will and my heirs, executors and administrators shall warrant and defend the same unto the said R. C. Patterson and his heirs and assigns forever against the lawful claims and demands of all persons whomsoever.

In witness whereof, I have hereunto set my hand this 29th day of October, A. D. one thousand eight hundred and eighty-five.

OTTO BOEHME.

In presence of—
LUTHER DRAKE.

277 STATE OF NEBRASKA, } ss:
Douglas County, }

On this 29th day of Oct., A. D. 1885, before me, a notary public in and for said county, personally came the above-named Otto Boehme (unmarried), who is personally known to me to be the identical person whose name is affixed to the above deed as grantor, and he acknowledged the instrument to be his voluntary act and deed.

Witness my hand and official seal the date aforesaid.

LUTHER DRAKE,
Notary Public.

Endorsed: Warranty deed from Otto Boehme to R. C. Patterson. Entered in numerical index and received for record this 30th day of Oct., A. D. 1885, at 10 o'clock — m., and recorded in Book 62 of Deeds, at page 429.

GUST. BENEKE,
County Clerk, Douglas County, Nebr.

EXHIBIT "D."

Warranty Deed.

Know all men by these presents, that we Richard C. Patterson and Martha Belle Patterson (husband and wife) in consideration of nineteen thousand four hundred and twenty-five dollars in hand paid, do hereby grant, bargain, sell, convey and confirm unto Isaac Martin the following-described real estate, situate in the county of Douglas and State of Nebraska, to wit:

Lots numbered five (5) to twenty (20) inclusive in block one (1) and lots numbered one (1) to twenty-six (26) in block two (2) in East Side addition as surveyed, platted and recorded, subject to taxes of 1887 and subject to an eight-hundred-dollar note which is a mortgage on the east five acres of this addition—fifteen hundred dollars of the twenty-three hundred dollars mortgage having been paid to Omaha savings bank.

278 Together with all the tenements, hereditaments and appurtenances to the same belonging, and all the estate, tit e dower, claim or demand, whatsoever, of the said Richard C. Patterson and wife, of, in or to the same or any part thereof. To have and to hold the above-described premises, with the appurtenances unto the said Isaac Martin and to his heirs and assigns forever.

And we the said Richard C. Patterson and wife for ourselves and our heirs, executors and administrators, do covenant with the said Isaac Martin and with his heirs and assigns that we are lawfully seized of said premises; that they are free from incumbrance except as above mentioned; that we have good right and lawful authority to sell the same, and that we will and our heirs, executors and administrators shall warrant and defend the same unto the said Isaac Martin and his heirs and assigns forever, against the lawful claims and demands of all person whomsoever.

In witness whereof, we have hereunto set our hands this 4 day of June, A. D. one thousand eight hundred and eighty-seven.

RICHARD C. PATTERSON.
MARTHA BELLE PATTERSON.

In presence of—
JOHN O. PATTERSON.

THE STATE OF NEBRASKA, } ss:
Douglas County, }

[SEAL.]

On this 4th day of June, A. D. 1887, before me, a notary public in and for said county, personally came the above-named Richard C. Patterson and Martha Belle Patterson, who are perso-ally known to me to be the identical persons whose names are affixed to the above deed as grantors, and they acknowledged the instrument to be their voluntary act and deed.

Witness my hand and official seal the date aforesaid.

JOHN O. PATTERSON,
Notary Public.

279 Endorsed on back: 22. R. C. Patterson. T. N. Warranty deed from R. C. Patterson *et al.* to Isaac Martin. Entered in numerical index of deeds. Received for record this 18th day of August, A. D. 1887, at 4.45 o'clock p. m., and recorded in Book 98 of Deeds, at page 184. C. P. Needham, county clerk, Douglas county, Neb.

R. C. Patterson, real-estate agency, Omaha, Neb. 445, 115. Recorded. Compared.

EXHIBIT "E."

No. I.

KANSAS CITY, MO., *Feb. 27th*, 1886.

R. C. Patterson, Omaha, Neb.

DEAR SIR: Your letter- of the 12th and 16th inst. came to hand during my absence from home, and I note what you say and claim. I wish to state that I do not owe you one cent, nor do I propose to be blackmailed out of one dollar by you. I'm ready for you whenever you commence proceedings, but in the meantime perhaps you had better settle with me for that 10 acres we bought together in Omaha. In your letter last October you state you sold it for $6,000, and the deed called for same amount, but I notice the records, &c., call for $10,000—a slight difference of $4,000. This change seemed to have occurred after the paper left Kansas City.

Then, too, I object to the original cost of the land as stated in your letter last May, viz., $4,800 (2,500 cash and 2,500 in note), when I know now the land only cost $3,600, or a difference of $1,200, making my half interest cost $600 less than you stated, which, taken together with my half of the $4,000 which you did not report, would be something like $2,600 which you are owing me.

I cannot say with you, "thus far my feelings alone have been affected;" but you have taken money from me by false repre-
280 sentations, the knowledge of which fact has only lately come to my hands. Now, I wish to know when you propose to pay me the above amount due me. Awaiting an early reply, I am,

Yours truly, F. P. DICKSON.

I will state I have all the evidence, documentary and otherwise, to substantiate other plans.

No. 2.

KANSAS CITY, MO., *March* 15, 1886.

R. C. Patterson, Omaha, Neb.

DEAR SIR: Yours dated the 8th inst., postmarked Omaha, the 9th, 8 p. m., came to hand in the forenoon of the 10th. I have never refused any one an explanation when properly requested to, but I don't propose to — bulldozed by any one. If you had spoken about the matter before you left here or have taken the pains to have asked properly you could have had no doubt at all the information wanted. I am always ready to listen to the truth, but when a disinterested party tells a different story I am rather inclined to believe him, as most mortals are, especially an average jury.

You have never as yet denied that the 10 acres in Omaha did not cost the $4,800.00 you represented it to have cost, but merely say it was never purchased by you at $3,600.00.

If you had the right, as you claim, of changing the figures in the deed you must have had extraordinary power as an agent so to do and more than I or any one else, except it be power of attorney, however granted; you never had such authority from me, I am sure.

281 When you penned the paragraph claiming that I owed you $2,250, as you had furnished ¾ of the cash, you knew or must have known that you were stating what was not so. You knew you had not purchased one cent nor was the sale consummated to McLeary or any one else. Even if you had had any cause for a claim, you have lost that right by statements in your previous letters.

I claim you still owe me $2,600.00 on the 10-acres deal in Omaha and have never given up the claim as yet; am ready to receive your draft for same by return mail.

Yours truly, E. P. DICKSON.

No. 3.

KANSAS CITY, MO., *May* 12*th*, 1886.

R. C. Patterson, Esq., Omaha.

DEAR SIR: There is yet due me on your due bill of Oct. 30 last $111.68, with interest to date at 10 % per annum, $1.25—$112.93, which you can remit me for in Eastern exchange. This was due on the 1st, but was overlooked by me or would have been attended to before.

Yours, &c., F. P. DICKSON.

No. 4.

KANSAS CITY, *May* 18, '86.

DEAR SIR: Please give my letter of the 12th inst. attention.

Yours truly, F. P. DICKSON.

282 No. 5.

KANSAS CITY, MO., *Sept. 4th*, 1886.

R. C. Patterson, Omaha, Neb.

DEAR SIR: Yours of May 19th last was duly rec'd; have been patiently awaiting to hear from you again with draft enclosed for the $112.93 and interest due me. If it is as you say it seems as if the note of Boehme should have been paid ere this.

Yours, &c., F. P. DICKSON.

No. 6.

KANSAS CITY, MO., *Sept 14th*, 1886.

R. C. Patterson, Omaha, Neb.

DEAR SIR: Yours of 8th at hand and noted. It don't seem to correspond with yours of May 19th, wherein you state as soon as you receive the money from Boehme you will remit same to me and had no desire to retain that which does not belong to you. Kindly let me know by return mail whether you intend paying me the am't, $112.93, & int., and when. It is long past due and I should like it at once.

Yours, &c., F. P. DICKSON.

283 CLIFTON E. MAYNE, being first duly cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, testified in behalf of the defendant, R. C. Patterson, as follows:

Q. State your name, age, residence, and occupation.

A. Clifton E. Mayne; Omaha, Nebraska; horse jockey; age, 34 years. I will correct part of my answer. I am a dealer in real estate.

Q. What was your business in the year 1885?

A. Real-estate business.

Q. How extensively were you engaged in that business in the city of Omaha at that time?

A. I was very extensively engaged. I was doing about the largest business of any man in that line in Omaha at that time.

Q. Do you know the property in controversy in this suit between Patterson and Dickson?

A. Yes; East Side addition.

Q. Has your attention been called to the property deeded by Patterson to Boehme in the fall of 1885?

A. That is the property called East Side addition?

Q. Yes.

A. Yes.

Q. What familiarity had you with that property and other real estate in that locality at that time—October and November, 1885?

A. During the year 1885 I was right-of-way agent for the Missouri Pacific railroad and Belt line and bought right of way through that territory and bought and sold other property there. I bought all right of way for those railroads down through there during 1885.

Q. What, in your opinion, was this property in controversy worth in the months of October and November, 1885?

A. About $400 an acre.

284 Q. Do you know what other property there in that vicinity was selling for at that time—in other words, what did you pay for other property which you bought for right of way for the railroad companies?

A. I paid $200, $300, and $350 an acre; I didn't pay over $300 for most of what I bought for right of way.

Q. Mr. Mayne, did you have the selling of any real estate there in that locality in 1886, after the depot had been located?

A. Yes.

Q. Where was that located with reference to this land in controversy—that is, how far was the land you sold from this land?

A. I don't know any particular piece excepting one.

Q. Can't you see it here (pointing to map)?

A. Yes.

Plaintiff objects; immaterial, irrelevant, and incompetent.

Q. How much did it sell for?

A. That piece of land sold for $400 an acre in February, 1886.

Q. Was it directly south of the land in controversy?

A. Yes; there was just five acres between it and East Side.

Q. Is that the land marked as Hartford place?

A. Yes.

Cross-examined by Mr. OFFUTT:

Q. When did you begin the real-estate business, Mr. Mayne?

A. In 1882.

Q. When did you quit the occupation that you were engaged in prior to going into real estate—that is, prior to undertaking real estate as a business?

A. 1882.

Q. What had you been engaged in before that?

A. I was a telegraph operator, newspaper man, and a coal operator.

Q. When was it you made the purchases for the right of way for the railroad company that you have spoken of?

285 A. During 1885.

Q. During what month in 1885?

A. I don't remember exactly what month I commenced or what month I quit. It was during the summer. I can't recollect now the months. I was engaged for several months at work all around the city.

Q. Did you buy any land in the locality of East Side for this railway line during that summer?

A. Yes.

Q. During what months, about?

A. I don't remember during what months I bought it, not having charged my memory with it, but know it was during the summer.

Q. It was prior to October, 1885, was it?
A. Yes.
Q. Are you certain of that?
A. Yes.
Q. At whose instance did you purchase this land?
A. I purchased it for S. H. H. Clark.
Q. He was vice-president, I believe?
A. Yes.
Q. Did or did not the location of that railway line have any effect upon values in that neighborhood?
A. Yes.
Q. Did it have a depressing or the contrary effect after it became known that it was to be located there?
A. Of course it had the effect of raising values.
Q. Well, to what extent; much or little?
A. A great deal.
Q. Do you know James P. English, of the firm of Offutt & English?
A. Yes.

286 Q. I will ask you if in April, 1888, you did not have a conversation with him in your office in the city of Omaha on the subject of the value of this land, and didn't you there tell him—he and you together being present—some time in the latter part of April, 1888, that this land in October, 1885, was worth $1,000 an acre.

A. No, sir; I don't believe any such conversation took place.
Q. Did you have any conversation with Mr. English about this land?
A. I don't remember having any conversation with Mr. English on the subject at all.
Q. Didn't you during the month of March or April, 1888, have a conversation with Mr. English, of Omaha, in which you told him that this land was worth $900 or $1,000 an acre?
A. I don't have any remembrance of talking with him or anybody else in regard to that land except when Patterson asked me if I remembered it.

The signature to this deposition is waived by consent of parties.

EDWIN DAVIS, being first duly cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, testified in behalf of the defendant, R. C. Patterson, as follows:

Q. State your name, age, residence, and occupation.
A. Edwin Davis; aged 50; residence, Omaha, Nebraska; business, livery and boarding stable.
Q. What business were you engaged in in 1885?
A. In the real-estate business.
Q. Do you know the property known as East Side addition, formerly owned by Patterson?
A. I do now; yes.

Q. Were you familiar with the value of that property in the fall of 1885?

A. Well, I knew something of it, the value of property there in that locality.

Q. What, in your opinion, was that property worth per acre in the fall of 1885?

287 Plaintiff objects; immaterial, irrelevant, and incompetent, the witness not having shown himself qualified to testify.

A. In my opinion the property was worth from $200 to $250 an acre. At that time property in that neighborhood was worth that.

Q. At that time what experience had you had in the real-estate business?

A. I had some property in that locality for sale. A friend of mine wanted I should sell a piece for $150.

Objected to by plaintiff as not responsive to the question, immaterial, irrelevant, and incompetent, and the plaintiff moves that the same be stricken out.

Q. What was that same property worth in 1886?

Objected to as incompetent, immaterial, and irrelevant.

A. It was worth more than —, there being some excitement about the depot being there, &c. I think the greatest excitement was in the spring of 1886.

Q. What, in your opinion, was the property actually worth in 1886?

Objected to as incompetent, immaterial, and irrelevant, the witness not having shown himself qualified to testify.

A. The property was worth, as nigh as I can remember, from $400 to $500 an acre in 1886.

Q. What is it worth now?

Objected to as immaterial, irrelevant, and incompetent.

A. It is worth from $600 to $700 an acre now.

Cross-examination by Mr. OFFUTT:

Q. Do I understand you, Mr. Davis, that you were engaged as a real-estate agent exclusively during the year 1885—that is, were you dealing in real estate exclusively, or were you interested in other business?

A. I was in that business exclusively.

Q. Were you making sales of inside or suburban property,
288 or were you making a specialty of either?

A. I had both made sales of inside and outside property.

Q. Did you own any suburban property yourself?

A. No, sir; not exactly; I didn't have any property outside.

Q. What was the style of the firm, or did you deal individually?

A. I did business individually at first and then took a partner for a while; and a partner in 1886.

Q. Who was your partner?

A. His name was Charles; I can't call his name now. He left here and has gone to California.

Q. In estimating these values with regard to the year 1885 or summer of 1885, how do you fix the value in your mind with regard to the date named?

A. Because I know in 1885 I was out there and drove over the land in that neighborhood and looked at it with some parties that wanted to sell.

Q. Do you estimate the value you have given of $200 or $250 as being in what month?

A. I could not testify as to that.

Q. You just mean to say generally in the year 1885?

A. Yes.

Q. What was the land worth in May or June of 1885; was it worth as much as $450 an acre?

A. I should think that a very big price; it was not worth that much.

Q. Well, what was it worth in May and June of 1885?

A. Was that previous to the laying out of this town site?

Q. Which town site?

A. This west side here (pointing to map).

Q. I am not supposed to know anything about that. I ask you with regard to your recollection of the addition of that section of the town, and what, in your opinion, was its value.

289 A. My recollection is that property in that neighborhood was worth about—that is, not exactly in that addition, but in that neighborhood, about $150 to $200 an acre. I know, because I was riding over the land. I didn't purchase any property outside, but had dome for sale there.

Q. After the location of this town site and the improvements in that neighborhood, was there any effect upon values in that locality?

A. Yes; I think there was.

Q. Much or little?

A. Considerable.

Q. Your statements, then, as to values is based upon the condition of affairs prior to the time of the improvements?

A. My opinion is based upon what property out there sold for; that was the base that I based on. I distinctly recall one man——

Q. Never mind any particular case. Do you know when the town site was located?

A. I can't call to mind just now about that.

Q. Did that have any effect upon values in that locality?

A. I presume it did.

Q. Then how can you intelligently state that the value was so much in May and June, when you don't know whether or not the town site was located?

A. By looking over the land and having property there for sale.

Q. What was the value in October following, more or less than in May and June preceeding?

A. I don't understand.

Q. My question is, did the property go up or down between the months of May and June and October, 1885?
A. I can't tell you that.
Q. You simply spoke in general of the year 1885?
A. Yes.
290 Q. Were you ever connected in business in any way with Mr. Patterson?
A. No, sir.
Q. Are you related to him in any way?
A. No, sir.

The signature to this deposition is waived by consent of parties.

H. B. IREY, being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, testified in behalf of the defendant, Patterson, as follows:

Q. State your name, age, and residence.
A. H. B. Irey; Omaha, Nebraska.
Q. What business were you engaged in in 1885 and 1886?
A. Real estate.
Q. Did you know the real estate known as East Side in the fall of 1885?
A. Yes.
Q. You may state what was the fair market value of the property per acre in the fall of 1885.
A. I placed my valuation on what property sold for in the immediate neighborhood, and Hartford place was sold for $400 an acre.
Q. How did the value of Hartford place compare with the value of East Side addition?
A. About the same value.
Q. Do you know of the value put upon any other property in that locality in the fall of 1885 and the spring of 1886?
A. Acre property, property in Himebaugh's addition and Brookline, sold for from $220 to $250 an acre.

Plaintiff objects; immaterial, irrelevant, and incompetent.

Q. What do you say, Mr. Irey, as to the price which you speak off this piece of real estate being sold for being a fair price for such property at that time?
A. It was a fair price; yes.

291 Cross-examination by Mr. OFFUTT:

Q. You speak of selling the addition known as Himebaugh place. How many acres was there in that?
A. Five acres.
Q. Its length was just the same as East Side?
A. Yes.
Q. Making it a strip just half the width?
A. Yes.

Q. Had or had it not been platted or subdivided into town lots when sold?

A. No, sir.

Q. Is it or not a fact that a- acre strip compared with the area therein and considering its length could be more or less advantageously platted into town lots, property which was the same length and double the width—in other words, in which would there be more or less waste land?

A. I had something to do with drawing up the plat of Hartford place and I found it cut just about the same 5 acres as it would 10 acres.

Q. Would there be more or less waste land than in Hartford place?

A. Usually where they subdivide 5 acres they allow half of the street, and where they subdivide 10 acres where the street runs between they allow for a full street, so it would cut up about the same; of course, it is considerable owing to how the land lays. If the 5 acres had been somewhat narrower and longer it would not have cut up so well.

Q. Which was nearest to West Side depot, East Side addition or Hartford place?

A. East Side.

Q. Which lay nearest with regard to the general thoroughfare of approach to and from the railroad from East Side, East Side addition or Hartford place?

A. East Side addition.

292 Q. Which is nearest to the depot known as West Side?

A. East Side addition.

Q. Which is nearer to what is know as West Side—East Side addition or Himebaugh's addition and Brookline?

A. East Side addition.

Q. Do you mean to say that East Side is nearer than either Himebaugh's addition or Brookline are to the West Side depot?

A. Yes.

Q. How much nearer?

A. I should say about two blocks.

Q. Do you know in what particular locality you sold in Himebaugh's addition and Brookline addition that you speak of in your direct examination?

A. I don't know as I can point out the particular lots; think it was block one, in Himebaugh's addition; the south part of block one, Himebaugh's addition, and along in the center of block 2 and 3, in Brookline addition.

Q. At this period of time from 1885, do I understand you to say that you have any particular and definite recollection of the appearance and condition of East Side addition in the month of October, 1885?

A. As to the general lay of the land?

Q. Yes; and its value.

A. Not in October, 1885. I became more familiar with it in February and March, 1886.

Q. You didn't know so much about it in October, 1885?

A. No; but of course the lay of the land didn't change.

Q. I am not talking exclusively about the lay of the land. I ask you again how can you now, four years after 1885, speak with any degree of certainty as to what the value of this tract known as East Side addition was in the market in October of 1885?

293 A. I always base my value of property by what surrounding property was sold for.

Q. How did you ascertain what surrounding property sold for?

A. By selling what is now Hartford place at $400 an acre.

Q. Do you know where the party lived who owned Hartford place?

A. Somewhere in Ohio.

Q. Then the property was not here who owned it?

A. No, sir.

Q. The price was considered cheap and it was regarded as a fine purchase by those who got it, wasn't it?

A. The price was reasonable.

Q. Did you make the sale?

A. No, sir.

Q. Did your firm make it?

A. No, sir.

Q. Who did?

A. They bought it direct from the owner.

Q. The owner was not out here and didn't know what the value of the property was, did he?

A. That I could not state.

Q. What effect did the location of the improvements, the West Side town site, and the depot and this railway have on property in that locality?

A. It naturally increased the value.

Q. Much or little?

A. I should say considerable.

Q. Was or not the enhancement of the value by reason of the actual location of these improvements or the general rumor and anticipation that they would be located in that neighborhood? In other words, did or not these rumors have any effect upon the increase of values in that locality?

A. As a natural consequence, they always have had in Omaha.

294 Q. Did they in this instance?

A. Somewhat; yes.

Q. Do you know whether the party living in Omaha who owned Hartford place knew of the location of these improvements?

A. Did not.

Q. That property, Hartford place, was regarded very cheap at $400 an acre, was it not?

A. It was regarded as reasonable or the parties would not have bought it.

Q. That does not answer whether it was regarded as cheap.

Redirect:

Q. Did Jno. A. McShane represent the parties in Ohio who owned that property?

A. Since you mention it, I believe he did; yes.

Q. Jno. A. McShane was a large real-estate owner in this city at that time, was he not?

A. Yes.

Q. Was he not familiar with the property interest around Omaha and the values of real estate?

A. I considered him so at that time; yes.

Signature waived by consent of parties.

DAVID REED, being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, testified in behalf of the defendant Patterson as follows:

Q. State your name, age, and residence.

A. David Reed; residence, West Omaha precinct; age, 46 years.

Q. What business were you engaged in during 1885 and 1886?

A. Farming and trading some in real estate.

Q. Do you know the land known as East Side that was owned by Patterson?

A. Yes; I do.

295 Q. How far was that from where you live.

A. From where I live it is, I guess, about two miles.

Q. Were you familiar with values of real estate in the vicinity of East Side in the fall of 1885, in the months of October, November, and December?

A. I think I was. I sold a piece that year that I think was about a quarter of a mile from East Side.

Q. What would you say was the fair market value of East Side in October, November, or December of 1885, per acre?

A. I sold 64⅓ acres.

Plaintiff objects to the witness stating what he sold property for; immaterial, irrelevant, and incompetent.

A. I sold the undivided one-half. This belonged to heirs—this property, you understand, the 64 acres—six minors and six of age, and I sold the undivided one-half and had to get an order from the court to sell the other half; didn't get through that until Feb., 1886, I think; took us that long to get it through the court; had to get a decree from the court to close that out and get a guardian appointed and give bonds for guardian. The first half I got $6,000—that would be 32¼ acres—and the other half kept advancing and I got $7,000 for that.

Q. How many acres?

A. 32¼.

Q. That was a little over $200 an acre?

A. Yes; $200.50; something like that.

Q. What would you say East Side was worth per acre at that time?

A. East Side was between a quarter and a half mile nearer Omaha City and was worth something more; not a great deal. I could not put a certain value on it. The property was worth $25 to $50 an acre more. The way land sold then depended on the buyers. You could sell a piece of land to some for just what you asked for it and others you could not. I had six buyers before I got
296 that sold and got my price for it.

Q. What would you say of $600 an acre for East Side in the month of October or November, 1885, as to whether or not that was a fair or big price for that property?

A. If he got that in October he got a big price, a very big price, because I know land adjoining me sold for $150; a piece of 36 acres. It was sold to Stone, of Dewey & Stone, for $150.

Q. What would you say as to that being a fair or big price in November of 1885?

A. It was a big price then—$600, you say—I would consider that a big price.

Cross-examination by Mr. OFFUTT:

Q. What business are you now engaged in?

A. Farming.

Q. Anything else except farming?

A. Sometimes I do a little trading in cattle and real estate, but real estate is kind of off at present.

Q. You were never engaged regularly in the business of real estate—that is, exclusively as an agent—in the city of Omaha, were you?

A. No, sir; I was not.

Q. You did not regard yourself as an active dealer in real estate, did you?

A. No; but I was agent for this piece and other pieces.

Q. Real estate was only a part of your business then?

A. At that time I guess I done more at real estate then farming.

Q. You still lived out on the farm, did you?

A. Yes; I still lived on the farm.

Q. You kept no office in the city, did you?

A. No; I never kept an office in the city.

Q. Did you know Mr. Patterson then?

A. I did.

297 Q. Do you know what business he was engaged in at that time?

A. Yes.

Q. What business?

A. Real estate.

Q. He was engaged in real estate in that section, was he?

A. Yes; I saw his advertisement up.

Q. Do you know how long he had been engaged in the business?

A. I don't know how long, but I seen his posters up out there.

Q. What is your opinion as to whether he was conversant with values of real estate in that locality at that time?

A. I think he was.

Q. Did you know of anybody in the city more conversant with the value of real estate in that locality then he was?

A. I don't know as there was.

Q. You knew the real-estate agents in the city generally, did you?

A. Yes; I am acquainted with a good many. I know at least a dozen.

Q. Was there any one dealing as extensively in that neighborhood as Patterson was?

A. I think there was.

Q. My question is did anybody do as much as he did in that section.

A. Not in that particular locality.

Q. What can you say as to who among the active real-estate dealers was best acquainted with values at that time in that section? By that section I mean near East Side addition.

A. I hardly know how to answer that question. The men that I know are all qualified men in that business.

Q. Well, what men were the best qualified?

A. Byron Reed & Co. are good men and Boggs & Hill and R. C. Patterson here—all good men.

Q. What would you say about Mr. Bell—Jno. T. Bell?

A. Bell & McCandlish, I think, was the firm. They were good men.

Q. They knew more about real-estate values than you did?

298 A. I don't know about that; I was well posted in that neighborhood.

Q. How was your property, the property that you sold, located with reference to this East Side?

A. There was just a 40 between us. The cemetery was on one side and 40 acres; that would be 80 rods.

Q. How was it located—north, south, east, or west?

A. East Side was south and east.

Q. Was this east or west of the railroad?

A. On the west.

Q. Was East Side nearer the railroad than you?

A. Yes.

Q. Which was nearer the West Side depot, your property or East Side addition?

A. Well, as to the distance I could hardly say. Mine was more convenient, because there was a creek or slough to cross to get to the depot from East Side. The creek cut it off, and I didn't have to cross it—Saddle creek.

Q. How long have you been out of the real-estate business?

A. I am not out of it; I am in it every day that I can sell anything. I have a farm out near Dundee place that I would like to sell to-day—part of it if I could.

Q. Did the location of the railroad out there have any effect upon the values?

A. I don't know but it did have some. The boom started in August of that year. I know I was putting up hay, and a great

many came out in buggies and inquired about the land. In the fall they started this railroad, but the boom started in August.

Q. The boom kept up, didn't it?

A. The rise was from August, 1885, to June, 1886. *A.* It kep on for along about a year after, but not so fast as during these years.

Signature waived by consent of parties.

299 JOHN T. DILLON, being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, testified in behalf of the defendant Patterson as follows:

Examined in chief by Mr. BURBANK:

Q. State your name, age, and place of residence.

A. Jno. T. Dillon; Omaha, Neb.

Q. How long have you lived in Omaha?

A. Six years.

Q. What is your occupation?

A. Real estate and loan business.

Q. What is your age?

A. 35 years.

Q. Have you been in the real estate and loan business since 1883, the time you came here?

A. Since the fall of 1883, I think; about October. I came to Omaha in the summer.

Q. Were you engaged in the real-estate business in the spring of 1885?

A. I was.

Q. State whether or not you were acquainted with R. C. Patterson.

A. I am and have been for some time.

Q. Do you know one Dickson, who is plaintiff in the case of Dickson *vs.* Patterson?

A. I do not.

Q. State whether or not you were acquainted with the ten-acre tract of land in controversy between Patterson and Dickson, now known as the East Side addition to the city of Omaha.

A. Yes; I know that addition.

Q. State when you first became acquainted with that property.

A. I became acquainted with it along in the fall of 1884 or winter of 1885.

Q. State what acquaintance you had with the property with reference to the price and value of it.

300 A. I was a member of the firm of J. E. Riley & Co. I was in partnership with Mr. Riley and we had the agency for that piece of property.

Q. Did you make any sale of that property?

A. We sold that property, I think, along early in the spring of 1885.

Q. For what did you sell it?

Plaintiffs objects — immaterial, irrelevant, and incompetent.

A. We had the option of selling for $4,000; Tukey & Keysor owned the property?

Q. What month was that?

A. I think—well, I know it was just at the breaking out of spring; probably in March or the 1st of April; it was just beginning to get nice weather, I know.

Q. State whether or not you are acquainted with what R. C. Patterson paid for this ten-acre tract of land?

A. I will just state this: that after we failed to make our sale materialize, the party not showing up, they said sure they would take the property and didn't show up to close the deal for $4,200; $200 was to be the commisssion. Mr. Keysor got discouraged on it. He was a little short of money and we were making particular efforts on Mr. Keysor's account to sell it. A friend of Mr. Keysor——

Objected to as immaterial, irrelevant, and incompetent and not responsive to the question, and plaintiff asks that all of the statement made by the witness since the last question be stricken out for the reasons above stated.

A. I was going to say that he had a friend in Minnesota who was putting up part of the money for his half, and the party was getting a little anxious because he had not seen anything developing in the way of profits, and was anxious to sell and listed the property with me then at $350 an acre by the single acre, or said I could sell for $3,300 net.

301 Q. You may state whether or not you are acquainted with what Patterson paid for the property at the time he purchased it.

A. I met Mr. Keysor after we had made the effort to sell and could not, and he told me that the property had been sold.

Any statement that Mr. Keysor may have made is objected to as immaterial and not in anywise binding upon the plaintiff in the case, he never having been shown to be present.

A. He said that the property had been sold and that "we got our price." He also said: "I guess our agents have made more money out of it than we have."

Q. Who were his agents?

A. I don't know as I know.

Q. I will ask you whether or not A. R. Souer was the agent.

A. I don't believe I can swear on that point; think probably it was Bedford & Souer; won't be positive.

Q. Do you know whether the $3,300 mentioned was the net sum paid to Keysor or not?

A. All I know about it is that it was listed at $3,300 net. He said we could sell at that price, as that was just about enough to make a fair percentage for his friend, about 15% or 20%.

Q. You knew the value of property in 1885?

A. Yes; I knew the value of property in general.

Q. State what was the fair market value of this property in Oct. or Nov., 1885.

A. I think the fair market value at that time was $400 or $500 an acre.

Q. What was the value in the spring of 1886?

A. I know I was trying hard to sell out there and I could not do it.

Q. At the time of the sale did Patterson make any statement to you with reference to what he paid for the property?

Objected to as immaterial, irrelevant, and incompetent.

302 A. After I had talked with Keysor I made it a point to see Patterson and ask him if he had bought that 10 acres and he said he had and paid $800, and I then told him that I could have delivered the property to him for less than that and made a good commission myself, and he told me I was too late.

Q. Did he express any desire or wish that you had come earlier or not?

Objected to as immaterial, irrelevant, and incompetent.

A. I believe he did; said he wished I had come sooner, or something of that kind.

Q. You may state whether or not, if this 10-acre tract was sold for $600 in the fall of 1885, was not that, in your opinion as a real-estate agent and an expert dealer in real estate, the fair market value of the property.

A. I think it was undoubtedly a good, fair price.

Q. State whether or not it was considered a high and sufficient price.

Objected to as leading, immateria-, and incompetent, and the witness has answered the question.

A. It was as full a price as I knew any property to sell for at that time. It was a good, round price and it was a good time to sell it.

Cross-examined by Mr. OFFUTT:

Q. Would you say it was a good time to sell it if on the 14th of February, 1887, thereafter it was sold for more than $20,000?

A. Well, at that time, Oct., 1885, taking things as they were then, it was a good time to sell it. Sometimes things rise and we look back and think it was not a good time to sell, but, as things were then, it was.

Q. I am talking now about looking back upon the fact that after that, on the 14th day of Feb., 1887, it sold for $20,000, and
303 ask you if you would think it was a good time to sell at $600 in Oct., 1885.

A. I will say this, Mr. Offutt: If it sold for $20,000 in 1887 it was an accident, and it was nowhere near worth it in 1885 or 1887 or 1889.

Q. You were connected with the firm of J. E. Riley & Co in the winter of 1884 and 1885, during the year 1885?

A. We were together about a year. The firm commenced in August or September.

Q. Do you remember what time this particular piece of property in question was listed with your firm for sale by Mr. Keysor?

A. I think we had it through the winter, the latter part of 1884 and spring of 1885, up until it was sold.

Q. It remained upon your list until Mr. Keysor notified you that it had been sold?

A. It must have. I think we had it five or six months.

Q. Did you have any written authority from Mr. Keysor or merely verbal authority to sell the property—that is to say, was it listed under written instructions to sell at a certain price or under verbal instructions?

Objected to as incompetent and immaterial.

A. Verbal instructions. I always took property in that way.

Q. You recognized him as a reliable and responsible man and was willing to take it upon verbal instructions?

A. Yes.

Q. It was first listed at what price?

A. We had it at $4,000.

Q. When was it changed from $4,000?

A. On or about the 1st of April. I would not be positive.

Q. Can you give the date when the list price was changed back to $3,300?

A. I don't know as I can give the exact date on that, but it was soon after the 1st of April.

304 Q. About the 1st of April?

A. Yes: right on or about that date.

Q. Who made the change in the list price?

A. Mr. Keysor himself.

Q. Did R. C. Patterson know that you had the property listed for sale?

A. I don't believe he did.

Q. You don't know whether he did or not?

A. I don't know certain.

Q. What, in your opinion, was the property worth in May, 1885?

A. I think in May, 1885, the property was not worth over $350 or $400 an acre.

Q. What was the cause of the rise in the value of the property from May, 1885, until October, 1885?

A. There was a little flurry in property in regard to the Belt line, and there was considerable talk of locating a canning factory out there, which was afterwards done, and that caused considerable increase. I mean by the Belt line the Missouri Pacific depot.

Q. You mean by that the depot known now as West Side station?

A. Yes; and we thought that we were going to get the Mo. P. shops, but we didn't, as that was only guess-work.

Q. Do you know whether or not R. C. Patterson was acquainted with the values of real estate in that neighborhood?

A. I could not say about that.

Q. Do you know whether or not he was the owner of real estate in that locality?

A. I know it now, but didn't know it then.

Q. Was or was not Patterson extensively engaged in the real-estate business in the city of Omaha in the year 1885?

A. I think he was actively engaged in it then. I was only just on speaking terms with him then; that was all.

305 Q. Did you know of any dealer in the city more actively engaged in suburban real estate than R. C. Patterson at that time?

A. He was one of our most active dealers at that time in Omaha property.

Q. State whether or not he was informed as to the values of real estate at that time.

Defendant objects; not proper cross-examination.

A. I should consider him fairly well posted on all classes of property.

Q. What would you say about $480 an acre being a fair, reasonable, or the contrary price for this property in May, 1885?

A. It was a good, full, round price for it right then and better than I could do, and I tried it several times.

Redirect:

Q. State what Mr. Patterson said to you with reference to your agency after he had purchased this land for $4,800.

Objected to as hearsay, incompetent, immaterial, irrelevant, and for the further reason that it is not proper redirect examination.

A. I could not say anything, only to repeat what I said before. I made it a point to meet him one day and asked him if he had purchased that 10-acre property.

Q. I wish to call your attention to the question of counsel with reference to whether or not R. C. Patterson knew that you had this property for sale prior to the purchase of the property by Patterson. State what he said to you after he had made the purchase for $4,800, as claimed by him.

A. He said that he wished he had known it sooner or he wished that I had come around sooner.

Q. Mr. Dillon, you are acquainted with West Side, are you not, an addition to Omaha, and also Sheridan place?

A. Yes.

Q. Those additions and Patterson's sub. also?

306 Q. Those additions lie adjacent to and abutting upon this property in question, do they not?

Objected to as not proper redirect examination.

A. They either adjoin it or else come up very close; they are all near together.

Q. Do you know what individual lots were selling for in those different additions I have named in February, 1887——

Objected to for the reasons last above given.

—and if the price they were selling for was not from $500 to $800 a lot?

Plaintiff further objects for the additional reason now that it is leading.

A. On single lots or acre lots?

Q. Single lots as platted.

A. My idea of West Side is that at about that time they were selling for from $350 to $500 a lot.

Q. How about the other additions?

A. I don't know but I ought to fix that up a little different. I don't know much about any selling at that price either. I had a talk with Shriver about it and that is the main thing that I know about it.

Q. State whether or not you were acquainted with Bell & McCandlish and the prices they sold lots for at West Side.

Objected to for reasons last above given.

A. Could not say only just my recollection, and that is that they sold them from $350 to $500, and maybe on Leavenworth St. lots sold for more than that.

Recross-examination:

Q. You say you made it a point to meet Mr. Patterson to ask him whether or not he had purchased that 10 acres. Why did
307 you make it a point to meet him and ask him that? Did you know that he had been trying to buy it?

A. I know from Mr. Keysor that he had bought it.

Q. Then what made you meet and ask him if he had bought that 10 acres or not?

A. Mr. Keysor didn't tell me what he paid for it, and I wanted to know what price he had paid for it.

Q. Did he buy it from Keysor?

A. I should say that he did not, judging from Mr. Keysor's——

Q. I didn't ask you anything about that. If you don't know you can say you don't know.

A. I don't know.

Signature waived by consent of parties.

MAY 15TH, 1889.

JOHN O. PATTERSON, being first duly cautioned, carefully examined, and sworn to testify the truth, the whole truth, and nothing but the truth, testified in behalf of the defendant, R. C. Patterson, as follows:

Q. You may state your name, age, and place of residence.

A. John O. Patterson; age, 24, I think; residence, Sioux City, Iowa.

Q. Were you living in Omaha in February, 1887?

A. Yes.

Q. For how long prior to February, 1887, had you lived in Omaha?

A. I came here in the spring of 1886, and was here to live permanently.

Q. When did you leave here and move to Sioux City?

A. I went up there to stay permanently in the fall of 1887.

Q. While you were in Omaha what connection, if any, did you have with the business of R. C. Patterson?

308 A. I was there in the office doing whatever work was to be done and showing real estate and doing general rustling as we called it.

Q. At what time did you do any clerical work for R. C. Patterson by way of drawing up contracts?

A. Yes, sometimes I drew papers up when he was busy.

Q. About the 17th of February, 1887, did you know a man by the name of Isaac Martin?

A. Yes, I know there was such a man as that.

Q. Did you know of any real-estate transaction between Isaac Martin and R. C. Patterson?

A. I remember of one transaction.

Q. What did that relate to?

A. It related to some lots in West Omaha.

Q. About how long before the making of that real-estate transaction had you seen or known Isaac Martin?

A. The first I seen of him was the time I was told to draw up and make some contracts for the lots.

Q. You may state what transpired between Isaac Martin and R. C. Patterson so far as you remember.

Objected to as immaterial, irrelevant, and incompetent.

A. Why, about all that I remember is that I made out some contracts between Martin and my brother, and at that time he paid him some money on the transaction.

Q. I call your attention to the contract which has been referred to in the testimony as Exhibit "B" and ask you to state if you ever saw that contract before this time.

A. I think I have seen this contract at least I done some of the writing in the body of it.

Q. In whose handwriting is the written portion of that contract?

A. In mine.

Q. In your handwriting?

A. Yes.

309 Q. State if you remember the circumstances attending the writing of that contract.

A. About all that I remember is that I drew some contracts and they were not just exactly right as to the terms and things, so I made out two or three sets or two or three duplicates and originals, and some of them I supposed was thrown in the waste basket. This looks like one of the first ones that was drawn up, and I don't know that it is the right one; I don't believe it was intended for the right one.

Q. You may give the reasons for that opinion you have given.

A. In the first place in drawing them up I see it is my handwriting, this Isaac Martin; I made that up and I suppose I did not take notice what I was doing, and when they signed the contract they took notice and said it was not right, and the terms was not right, and so I drew up some others, and I supposed this was thrown in the waste basket.

Q. In whose handwriting is that name, Isaac Martin, on the contract in evidence?

A. It is my handwriting, or at least I wrote the name on one or two of the contracts by mistake, and I suppose those were thrown in the waste basket and new ones made and signed.

Q. The name Isaac Martin on that paper was written by yourself?

A. Yes.

Q. Was Martin in the office at the time?

A. Yes; he was in the office and signed some of the contracts, but some of them was thrown to one side.

Q. At the time these contracts were written up were the others signed by Martin himself after the corrections were made?

Objected to; immaterial, irrelevant, and incompetent.

A. Yes; he signed some and took one away with him.

Q. Were you there at the office when one of the contracts was delivered to Martin?

310 A. Yes; it was delivered at the same time that this transpired.

Q. If you remember, you may state how you came to write his name on some of these contracts written up by you.

A. I didn't take notice but what it was a part of the body of the deed of the contract, and when my brother wrote his name he looked at it and said it was not right and I drew up other ones.

Q. Have you ever seen the contract since it was delivered to Martin?

A. No; this is the first I have seen since of the transaction.

Q. By that do you mean that this present instance, during the taking of this testimony, is the first time you have seen them since their execution?

A. Yes.

Cross-examination by Mr. OFFUTT:

Q. Are you any relation to the defendant R. C. Patterson?

A. I am his brother.

Q. Did you live with him when you resided in Omaha?

A. Yes.

Q. For how long did you live in his family?

A. Well, I was with him from the time I came here in the spring of 1886 until the fall of 1887, when I went away.

Q. I understand, then, Mr. Patterson, that it is a fact that the name Isaac Martin, signed at the bottom of the instrument just over the name Richard C. Patterson, was written by you?

A. Yes; it seems that way.

A. I know it seems that way, but is it your handwriting?

A. Yes.

Q. Which name was signed first, Isaac Martin or R. C. Patterson?

A. The contracts were made out, as I recollect it, and by some mistake I wrote the names on the first two contracts, and when he was signing he took notice of it——

Q. My question is, Who signed this contract first?

A. I signed the name before it went into his hands.

311 Q. Whose hands?

A. My brother.

Q. Now, answer the question, please—was the name Isaac Martin or the name Richard C. Patterson signed first?

A. Isaac Martin.

Q. When was the name J. O. Patterson, under the words "in the presence of," signed which appears at the bottom of the contract, on the lower left-hand corner?

A. At the same time.

Q. Is that your signature?

A. Yes.

Q. And was that signed before the name Isaac Martin or afterwards?

A. It was signed before Isaac Martin.

Q. Now, I will ask you if you mean to say that the name John O. Patterson and the name Isaac Martin at the bottom of this instrument were written with the same pen with which you wrote the body of this contract—I mean by the body the part written with pen and in ink.

A. My recollection and remembrance is that at the time the transaction occurred my name and Isaac Martin's name was put on the first two contracts that was made out and handed to my brother, and when he signed them he took notice that I had signed Martin's name instead of having Martin sign it.

Q. That is not the question I asked you. My question is, look at the contract, then think about the transaction and tell me whether or not all of the contract written with pen and in ink, as you say it was by you, was written with the same pen that the signatures J. O. Patterson and Isaac Martin were written with.

A. Yes.

Q. You say that is a fact, now, that they were written with one and the same pen?

A. I suppose so. I always, as a general rule, use one pen; if I changed it is because the pen gets out of order; this was written with one pen.

Q. You think from your knowledge of the matter and from

312 the appearance of the instrument that the writing filled in in the body *of the body* of the contract was written with the same pen that your name was written with and that the name Isaac Martin was written with?

A. Yes; I am certain of that.

Q. You were engaged in the real-estate business here at that time, were you?

A. Well, I was kind of working around my brother's office.

Q. Did you ever see what became of the other one of the two contracts that Martin did sign? He took one away with him. What became of the other?

A. The other one was destroyed, I suppose. I supposed that the ones the mistake was made in was the ones destroyed, but, by looking at this, suppose it was the other that was destroyed.

Q. You say you signed Martin's name to two of these contracts?

A. The first two I signed and handed them over to him.

Q. And you signed Martin's name at the bottom?

A. Yes.

Q. How long had you known Isaac Martin?

A. That was the first time I had seen him.

Q. Did that contracy state the true date of the month—the 17th—was it on the 17th?

A. Of course, I don't remember the time, only by the papers that had been drawn up.

Q. What day of the week was it?

A. I don't know.

Q. What time of the day was it?

A. I don't remember that.

Q. Do you know whether it was in the morning or in the afternoon?

A. I can't say.

Q. Was there anybody else present?

313 A. Yes; there was a half dozen or so in there.

Q. Who?

A. Mr. Townsend was there—he was also one of the helpers around the office—and I think a fellow named Laffin, who also helped some, was there, he was there off and on; think he was there that day; one of my other brothers was there, James H., and my brother R. C. was there.

Q. Did you see Mr. Martin when he first came in the office?

A. No; I was out at the time he came in and when I came in my brother told me to write up the contracts. I never seen him until he told me to write up the contracts that day.

Q. How long did you see him during that day?

A. I don't remember; I know I had not seen him after he took the contract; I didn't see him after that—that day.

Q. Did you see him the next day when he came in?

A. No, I didn't see him any more after that.

Q. You just saw him in the office that one day?

A. That is the only day I saw him at that time.

Q. Did you ever see him since then at any time?

A. Yes, he was there at the office at the time that the deal was closed up.

Q. Did you ever see him in Omaha at any other time?

A. Not that I remember of.

Q. Where did he live?

A. I don't know that.
Q. What was his business?
A. I never was informed as to his business.
Q. Do you know whether he lived in Omaha or not?
A. I think not; he seemed to be a stranger in the city.
Q. Did anybody come in with him?
A. Not that I remember of.
314 Q. Do you know whether he saw this property or not at the time he was in Omaha?
A. My brother had him out showing him something and I suppose he showed him this property.
Q. Your brother had him out showing him property?
A. Yes; and I suppose he showed him this.
Q. Which brother?
A. R. C.
Q. Are you certain of that?
A. Yes; he had him out showing him some property.
Q. And you supposed it was this property that he showed him?
A. Yes; I supposed it was.
Q. You didn't go out with him; didn't know that he showed him this property; you just supposed that he did.
A. No; I didn't go out with him.
Q. How much money did he pay down?
A. I don't remember just the amount that he paid.
Q. Did you see any money pass?
A. Yes; I seen the money pass at the time the contracts were made.
Q. Do you know how much money passed?
A. I don't remember how much.
Q. Do you know the handwriting of R. C. Patterson?
A. Yes; I guess I do.
Q. I will ask you to look at this contract and refer you to the endorsement on the back thereof; after the words in printing, "amount sold for," in figures written in ink, "$23,125," dated, then written in ink, "February 15, 1887," and so on, on that side of the folder; do you know whose handwriting that is in?
A. It looks like my brother's.
Q. Which brother?
A. R. C.
Q. I will ask you to turn the contract over and look at the outside endorsement, where it is marked "original" in blue pencil. Whose handwriting is the word original in?
A. My brother's, I believe.
315 Q. In whose handwriting on the same side of the contract are the words in blue pencil "cancelled June 4, 1887, and deed given," between two blue pencil lines?
A. That is my brother's, too.
Q. Which brother?
A. The one sitting right over there.
Q. Which one is he?
A. R. C.

Q. In whose handwriting is the endorsement on the back just above these blue pencil lines and just enderneath the words "contract for sale," written in ink, "bl'k one and two, East Side, from R. C. Patterson to Isaac Martin"?

A. That is my brother's, too; R. C. I have seen a good deal of his writing.

Redirect examination:

Q. When you answer that you saw Martin when the deal was closed up, do you mean the time when the deed was made out?

A. Yes.

Q. Where was it you saw Martin at that time?

A. In my brother's office—R. C.'s office.

Q. Were you present when the deed was made out to Martin?

A. Yes; I was there at that time.

Recross-examination:

Q. You never learned at any of these times where Martin was from?

A. No, sir.

Q. And you don't know where he is now?

A. I don't.

Q. You never corresponded with him?

A. No, sir.

Q. Did your brother have any correspondence with him?

A. I never knew anything regarding his correspondence.

Q. You were in the office all the time?

A. Yes; I was there, in and out every day.

316 Q. Did you do any of the correspondence for the firm?

A. No, sir.

Q. Did you keep a letter-press copy book?

A. Yes; there was one there.

Q. You copied the letters in that, did you?

A. Sometimes they would and sometimes they would not.

Signature waived by consent of parties.

STATE OF NEBRASKA, } ss:
County of Douglas, }

I, Hattie Duncan, a notary public within and for the county of Douglas and State of Nebraska, do hereby certify that the foregoing depositions were taken before me by consent of parties, and that the depositions were taken at the time and place heretofore set forth, and that each of the witnesses were duly cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, and were by me carefully examined.

I further certify that I am not related to or attorney for either of the parties to this suit or in any manner interested in the result thereof; that said depositions were reduced to writing by me in the presence of the witnesses respectively, and that the parties agreed

before me that the signature of the witnesses might be waived, and that I retained the possession of the testimony until I transmitted the same herewith into court.

[SEAL.] HATTIE DUNCAN,
Notary Public.

To 423 folios testimony in case of Dickson *vs.* Patterson, 20 cents per folio	$84 60
Swearing 7 witnesses, 10 cents each	70
Filing 9 exhibits, 10 cents each	90
Certificate, 25 cents	25
Binding and indexing, 50 cents	50
Total	$86 95
Claimed by the witness John O. Patterson as witness fee	4 00
Mileage	9 80
	$100 75

317 Upon the back of said depositions appear endorsements in words and figures following, to wit: No. 57, M. U. S. circuit court, district of Nebraska. Frank P. Dickson *vs.* Richard C. Patterson. Depositions filed May 24, 1889. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, at the May term of said court, on the 25th day of June, 1889, the following proceedings were had and done in said cause as appears of record on folio 572, Journal " N " of said court, to wit:

FRANK P. DICKSON
vs.
RICHARD C. PATTERSON *et al.* } 57, N. Cause Submitted.

This cause, coming on for hearing, was submitted to the court on its merits on briefs of parties and abstract of testimony to be filed.

Thereupon, afterwards, to wit, on the 31st day of September, 1889, findings of the court *was* filed in said case; which said findings of the court are in words and figures following, to wit:

United States Circuit Court, District of Kansas, at Chambers.

LEAVENWORTH, KAN., *Dec.* 30, 1889.

E. D. Frank, Esq.

DEAR SIR: I return herewith papers in the case of Dickson *vs.* Patterson. Since the oral argument before me in Omaha I have examined the papers & testimony & will state briefly my conclusions:

The charges of fraud & misconduct are, I fear, well founded. It is true that, if def'ts' testimony is to be taken as wholly & absolutely true, there was no wrong; but it is impeached by so many circumstances that I am afraid it is not to be depended upon. But I do not care to push any further inquiry in that direction. As-

suming that the charges of fraud are proved, I think com-
318 plainant's letters of Feb'y 27, May 12, May 18, Sept. 4 & Sep. 14, 1886, show that complainant, with knowledge of the fraud, not only retained what he had received from the sale, but elected to let it stand & pursue his claim for the moneys still due him thereon. I understand the rule to be that one defrauded by a sale of his real estate must, *whn* when knowledge of the fraud is brought home to him, make his election & that promptly, & that having elected to let the sale stand he cannot thereafter maintain an action to set it aside.

So I think def't is entitled to a decree dismissing the bill. Please notify counsel & ack. receipt. As the decree is a simple one, & bond on appeal will only be for costs, I presume Judge Dundy will consent to sign it.

Happy New Year to you all.

Yours truly, D. J. BREWER.

I leave Thursday morning for Washington.

Upon the back of said findings appear endorsements in words and figures following, to-wit: No. 57, M. U. S. circuit court, district of Nebraska. Frank P. Dickson *vs.* Richard C. Patterson *et al.* Findings of the court. Filed Dec. 31, 1889. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, at the November term of said court, on the 11th day of January, 1890, the following proceedings were had and done in said cause as appears of record on folio 72, Journal "O" of said court, to-wit:

FRANK P. DICKSON, Complainant,
vs.
RICHARD C. PATTERSON & ISAAC MARTIN, Defendants. } Decree. No. 57, M.

This cause having come on for hearing upon the pleadings, depositions, and proofs, and being argued by counsel, and the court being fully advised in the premises, it is ordered, adjudged, and decreed that the bill of complaint herein be, and the same is
319 hereby, dismissed at complainant's costs.

This decree is signed by Elmer S. Dundy, judge, pursuant to an order and written opinion of David J. Brewer, circuit judge. Appeal prayed for and allowed.

(S'g'd) ELMER S. DUNDY, *Judge.*

Thereupon, afterwards, to wit, on the 3rd day of February, 1891, affidavits of Geo. W. Ames, Alex. G. Charlton, W. G. Shriver, John N. Frenzer, and John L. McCague, *was* filed in said case; which said affidavits are in words and figures following, to-wit:

320 In the Circuit Court of the United States within and for the State and District of Nebraska.

FRANK P. DICKSON, Plaintiff,
—
RICHARD C. PATTERSON, Defendant. } Affidavit of George W. Ames.

UNITED STATES OF AMERICA,
State of Nebraska, County of Douglas, } ss:

The affiant, George W. Ames, having been first duly sworn, deposes and says that he is now and for more than five years last past has been a resident and citizen of the city of Omaha, in the State of Nebraska aforesaid, and during said time has been largely interested in real estate in said city and has engaged during said time extensively in buying and selling real estate in said city, and that during all of said time he has been acquainted with the values of real estate in and adjacent to the city of Omaha and knew of the property and its location in controversy in this action platted and described as "East Side addition" to the city of Omaha, Nebraska; that during all the month of January, 1890, and for some time prior thereto said property was of the actual value of $20,000.00 in money.

And further affiant saith not

GEO. W. AMES.

Subscribed in my presence and sworn to before me this 3rd day of February, 1891.

WILL. H. THOMPSON,
[SEAL.] *Notary Public.*

321 In the Circuit Court of the United States within and for the State and District of Nebraska.

FRANK P. DICKSON, Plaintiff,
—
RICHARD C. PATTERSON, Defendant. } Affidavit of Alex. G. Charlton.

UNITED STATES of AMERICA,
State of Nebraska, County of Douglas, } ss:

The affiant, Alex. G. Charlton, having been first duly sworn, deposes and says that he is now and for more than five years last past has been a resident and citizen of the city of Omaha, in the State of Nebraska aforesaid, and during said time has been largely interested in real estate in said city and has engaged during said time extensively in buying and selling real estate in said city, and that during all of said time he has been acquainted with the values of real estate in and adjacent to the city of Omaha and knew of the property and its location in controversy in this action platted and described as "East Side addition" to the city of Omaha, Nebraska; that during all the month of January, 1890, and for some time

prior thereto said property was of the actual value of $15,000 in money.

And further affiant saith not.

ALEX. G. CHARLTON.

Subscribed in my presence and sworn to before me this 3rd day of February, 1891.

[SEAL.] WILL. H. THOMPSON,
Notary Public.

322 In the Circuit Court of the United States within and for the State and District of Nebraska.

FRANK P. DICKSON, Plaintiff,
—
RICHARD C. PATTERSON, Defendant. } Affidavit of W. G. Shriver.

UNITED STATES OF AMERICA,
State of Nebraska, County of Douglas, } ss:

The affiant, W. G. Shriver, having been first duly sworn, deposes and says that he is now and for more than five years last past has been a resident and citizen of the city of Omaha, in the State of Nebraska aforesaid, and during said time has been largely interested in real estate in said city and has engaged during said time extensively in buying and selling real estate in said city, and that during all of said time he has been acquainted with the values of real estate in and adjacent to the city of Omaha and knew of the property and its location in controversy in this action platted and described as "East Side addition" to the city of Omaha, Nebraska; that during all the month of January, 1890, and for some time prior thereto said property was of the actual value of $14,000 in money.

And further affiant saith not.

W. G. SHRIVER.

Subscribed in my presence and sworn to before me this 3rd day of February, 1891.

[SEAL.] WILL. H. THOMPSON,
Notary Public.

323 In the Circuit Court of the United States within and for the State and District of Nebraska.

FRANK P. DICKSON, Plaintiff,
vs.
RICHARD C. PATTERSON, Defendant. } Affidavit of John N. Frenzer.

UNITED STATES OF AMERICA,
State of Nebraska, County of Douglas, } ss:

The affiant, John N. Frenzer, having been first duly swprn, deposes and says that he is now and for more than five years last past has been a resident and citizen of the city of Omaha, in the State of

Nebraska aforesaid, and during said time has been largely interested in real estate in said city and has engaged during said time extensively in buying and selling real estate in said city, and that during all of said time he has been acquainted with the values of real estate in and adjacent to the city of Omaha and knew of the property and its location in controversy in this action platted and described as "East Side addition" to the city of Omaha, Nebraska; that during all the month of January, 1890, and for some time prior thereto said property was of the actual value of $14,000 in money.

And further affiant saith not.

JOHN N. FRENZER.

Subscribed in my presence and sworn to before me this 3rd day of February, 1891.

[SEAL.] WILL. H. THOMPSON,
Notary Public.

324 In the Circuit Court of the United States within and for the State and District of Nebraska.

FRANK P. DICKSON, Plaintiff,
vs.
RICHARD C. PATTERSON, Defendant. } Affidavit of John L. McCague.

UNITED STATES OF AMERICA,
State of Nebraska, County of Douglas, } *ss:*

The affiant, John L. McCague, having been first duly sworn, deposes and says that he is now and for more than five years last past has been a resident and citizen of the city of Omaha, in the State of Nebraska aforesaid, and during said time has been largely interested in real estate in said city and has engaged during said time extensively in buying and selling real estate in said city, and that during all of said time he has been acquainted with the values of real estate in and adjacent to the city of Omaha and knew of the property and its location in controversy in this action platted and described as "East Side addition" to the city of Omaha, Nebraska; that during all the month of January, 1890, and for some time prior thereto said property was of the actual value of $13,750.00 in money.

And further affiant saith not.

JOHN L. McCAGUE.

Subscribed in my presence and sworn to before me this 3rd day of February, 1891.

[SEAL.] WILL. H. THOMPSON,
Notary Public.

Upon the back of said affidavits appear endorsements in words and figures following, to wit: No. 57, M. In U. S. circuit court, district of Nebraska. Frank P. Dickson, plaintiff, *vs.* Richard C. Pat-

terson, defendant. Affidavits of Geo. W. Ames, Alex. G. Charlton, W. G. Shriver, John N. Frenzer, & John L. McCague. Filed Feb. 3, 1891. E. D. Frank, clerk. Chas. Offutt, attorney for plaintiff.

325 Thereupon, afterwards, at the January term of said court, on the 19th day of February, 1891, the following proceedings were had and done in said cause as appears of record on folio —, Journal "P," of said court, to wit:

FRANK P. DICKSON, Complainant,
vs.
RICHARD C. PATTERSON, Defendant.
} Order Granting Appeal. 57, M.

Now, on this 19th day of February, 1891, in open court, comes the complainant, Frank P. Dickson, by his solicitor, Charles Offutt, and prays an appeal herein to the Supreme Court of the United States from the decree made herein on the 11th day of January, 1890, and it appearing to this court that the amount in controversy is more than the sum or value of five thousand dollars, exclusive of interest and costs, it is ordered that said appeal be, and the same is hereby, granted and allowed, and the complainant is ordered to give bond for the payment of costs in the sum of three hundred dollars.

Thereupon, afterwards, to wit, on the 19th day of February, 1891, citations were duly issued in said case and returned and filed March 3rd, 1891; — which said citations the following are the originals:

326 In the Circuit Court of the United States within and for the State and District of Nebraska.

FRANK P. DICKSON, Complainant,
v.
RICHARD C. PATTERSON, Defendant.
} Citation on Appeal.

United States of America to Richard C. Patterson:

You are hereby notified that in a certain cause in equity in the United States circuit court for the district of Nebraska, wherein Frank P. Dickson is complainant and Richard C. Patterson is defendant, the complainant, Frank P. Dickson, therein has prayed an appeal to the Supreme Court of the United States from the decree in said cause entered, and that such appeal has been allowed.

Wherefore you are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on thirty days after the date of this citation, to show cause, if any there be, why the decree appealed from should not be reversed and set aside and relief be granted to said appellant, as by him prayed and as to justice and equity may appertain.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 19th day of February, 1891.

[Seal United States Circuit Court, District of Nebraska.]

ELMER S. DUNDY, *Judge.*

Nebraska aforesaid, and during said time has been largely interested in real estate in said city and has engaged during said time extensively in buying and selling real estate in said city, and that during all of said time he has been acquainted with the values of real estate in and adjacent to the city of Omaha and knew of the property and its location in controversy in this action platted and described as "East Side addition" to the city of Omaha, Nebraska; that during all the month of January, 1890, and for some time prior thereto said property was of the actual value of $14,000 in money.

And further affiant saith not.

JOHN N. FRENZER.

Subscribed in my presence and sworn to before me this 3rd day of February, 1891.

[SEAL.] WILL. H. THOMPSON,
Notary Public.

324 In the Circuit Court of the United States within and for the State and District of Nebraska.

FRANK P. DICKSON, Plaintiff,
vs.
RICHARD C. PATTERSON, Defendant. } Affidavit of John L. McCague.

UNITED STATES OF AMERICA,
State of Nebraska, County of Douglas, } *ss.*

The affiant, John L. McCague, having been first duly sworn, deposes and says that he is now and for more than five years last past has been a resident and citizen of the city of Omaha, in the State of Nebraska aforesaid, and during said time has been largely interested in real estate in said city and has engaged during said time extensively in buying and selling real estate in said city, and that during all of said time he has been acquainted with the values of real estate in and adjacent to the city of Omaha and knew of the property and its location in controversy in this action platted and described as "East Side addition" to the city of Omaha, Nebraska; that during all the month of January, 1890, and for some time prior thereto said property was of the actual value of $13,750.00 in money.

And further affiant saith not.

JOHN L. McCAGUE.

Subscribed in my presence and sworn to before me this 3rd day of February, 1891.

[SEAL.] WILL. H. THOMPSON,
Notary Public.

Upon the back of said affidavits appear endorsements in words and figures following, to wit: No. 57, M. In U. S. circuit court, district of Nebraska. Frank P. Dickson, plaintiff, *vs.* Richard C. Pat-

terson, defendant. Affidavits of Geo. W. Ames, Alex. G. Charlton, W. G. Shriver, John N. Frenzer, & John L. McCague. Filed Feb. 3, 1891. E. D. Frank, clerk. Chas. Offutt, attorney for plaintiff.

325 Thereupon, afterwards, at the January term of said court, on the 19th day of February, 1891, the following proceedings were had and done in said cause as appears of record on folio —, Journal "P," of said court, to wit:

FRANK P. DICKSON, Complainant,
vs.
RICHARD C. PATTERSON, Defendant.
} Order Granting Appeal. 57, M.

Now, on this 19th day of February, 1891, in open court, comes the complainant, Frank P. Dickson, by his solicitor, Charles Offutt, and prays an appeal herein to the Supreme Court of the United States from the decree made herein on the 11th day of January, 1890, and it appearing to this court that the amount in controversy is more than the sum or value of five thousand dollars, exclusive of interest and costs, it is ordered that said appeal be, and the same is hereby, granted and allowed, and the complainant is ordered to give bond for the payment of costs in the sum of three hundred dollars.

Thereupon, afterwards, to wit, on the 19th day of February, 1891, citations were duly issued in said case and returned and filed March 3rd, 1891; — which said citations the following are the originals:

326 In the Circuit Court of the United States within and for the State and District of Nebraska.

FRANK P. DICKSON, Complainant,
v.
RICHARD C. PATTERSON, Defendant.
} Citation on Appeal.

United States of America to Richard C. Patterson:

You are hereby notified that in a certain cause in equity in the United States circuit court for the district of Nebraska, wherein Frank P. Dickson is complainant and Richard C. Patterson is defendant, the complainant, Frank P. Dickson, therein has prayed an appeal to the Supreme Court of the United States from the decree in said cause entered, and that such appeal has been allowed.

Wherefore you are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on thirty days after the date of this citation, to show cause, if any there be, why the decree appealed from should not be reversed and set aside and relief be granted to said appellant, as by him prayed and as to justice and equity may appertain.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 19th day of February, 1891.

[Seal United States Circuit Court, District of Nebraska.]

ELMER S. DUNDY, *Judge.*

[Endorsed:] No. 57, M. In the U. S circuit court, district of Nebraska. Frank P. Dickson, complainant, *v.* Richard C. Patterson, defendant. Citation on appeal. Filed Mar. 3, 1891. Elmer D. Frank, clerk. Chas. Offutt, solicitor for complainant.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify in return that on the 2d day of M'ch, 1891, I received this citation on appeal, and on the 2d day of M'ch, 1891, I served the same on the within-named Richard C. Patterson, in Douglas county, State and district of Nebraska, by delivering to and leaving with him an original thereof, with all the endorsements thereon.

BRAD. D. SLAUGHTER,
United States Marshal for the District of Nebraska,
By D. H. MERCER,
Deputy United States Marshal.

[Endorsed:] Filed Mar. 3, 1891. Elmer D. Frank, clerk.

Marshal's Costs.

Service	2 00
Mileage	06
Total	2 06

327 In the Circuit Court of the United States within and for the State and District of Nebraska.

FRANK P. DICKSON, Complainant,
v.
RICHARD C. PATTERSON, Defendant. } Citation on Appeal.

United States of America to Richard C. Patterson:

You are notified that in a certain cause in equity in the United States circuit court for the district of Nebraska, wherein Frank P. Dickson is complainant and Richard C. Patterson is defendant, the complainant, Frank P. Dickson, therein has prayed an appeal to the Supreme Court of the United States from the decree in said cause entered, and that such appeal has been allowed.

Wherefore you are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, commencing on the second Monday in October next, to show cause, if any there be, why the decree appealed from should not be reversed and set aside and relief be granted to said appellant, as by him prayed and as to justice and equity may appertain.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 19th day of February, 1891.

[Seal United States Circuit Court, District of Nebraska.]

ELMER S. DUNDY, *Judge.*

[Endorsed:] No. 57, M. In U. S. circuit court, district of Nebraska. Frank P. Dickson, complainant, *v.* Richard C. Patterson, defendant. Citation on appeal. Filed Mar. 3, 1891. Elmer D. Frank, clerk. Chas. Offutt, solicitor for complainant.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 2d day of M'ch, 1891, I received this citation on appeal and on the 2d day of M'ch, 1891, I served the same on the within-named Richard C. Patterson, in Douglas county, State and district of Nebraska, by delivering to and leaving with him an original thereof, with all the endorsements thereon.

BRAD. D. SLAUGHTER,
United States Marshal for the District of Nebraska,
By D. H. MERCER,
Deputy United States Marshal.

[Endorsed:] Filed Mar. 3, 1891. Elmer D. Frank, clerk.

Marshal's Costs.

Service	$2 00
Mileage	06
Total	$2 06

328 UNITED STATES OF AMERICA, *District of Nebraska.* } *ss:*

I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, certify that the foregoing folios from one to three hundred and twenty-eight contain true and faithful transcripts of all the pleadings and proceedings in the case of Frank P. Dickson *vs.* Richard C. Patterson *et al.* of record and on file in my office as such clerk, and that copies of the citations herein have been lodged and remain in my office.

Witness my hand and the seal of said court, at Omaha, Nebraska, this 5th day of March, A. D. 1891.

[Seal United States Circuit Court, District of Nebraska.]

ELMER D. FRANK, *Clerk.*

Endorsed on cover: Case No. 14,514. Nebraska C. C. U. S. No. 668. Frank P. Dickson, appellant, *vs.* Richard C. Patterson. Filed March 9, 1891.